



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

# Compendium of Decisions Issued by the Tax Committees for the Year 2024 (Income Tax)





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General Secretariat of Zakat, Tax and Customs Committees

**Compendium of Decisions Issued  
by the Tax Committees for the Year  
2024  
(Income Tax)**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



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## Introduction

All praise is due to Allah, the Lord of the Worlds. May peace and blessings be upon the noblest of messengers and the seal of the prophets, our master Muhammad, and upon his family, his companions, and those who follow them. To proceed:

It goes without saying that the efforts exerted by the courts and judicial committees, and the rulings issued by them, collectively represent priceless legal and jurisprudential wealth. They form a valuable body of work that deserves utmost attention and care. Considering the commercial and industrial revolution taking place in the Kingdom of Saudi Arabia under Saudi Vision 2030, many complex issues have arisen in the realm of tax disputes. Stemming from its commitment to social responsibility, the General Secretariat of the Zakat, Tax and Customs Committees has undertaken the initiative to establish a solid foundation and reliable reference for committee members, taxpayers, and interested parties alike. This has been achieved through the publication of the final decisions issued by the Tax Committees for the year 2024, contributing effectively to the resolution of tax-related disputes. These documented rulings serve to clarify the established positions adopted by the committees, thereby helping to shorten litigation durations, ease the burden on adjudicators, and promote the principle of transparency upheld by the General Secretariat. Furthermore, they provide practical insights for entities involved in legal and regulatory research, particularly academic and training institutions.

We ask Almighty Allah to make this work sincerely devoted to His noble countenance, and to bless the efforts and guide them to all that is good. Indeed, He is Most Generous and Kind.



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

Praise be to Allah alone,

Guided by the vision and values of the General Secretariat of the Zakat, Tax and Customs Committees, which has committed itself to excellence in resolving zakat, tax and customs disputes, adopting innovative and effective methods, promoting transparency and impartiality, and developing cooperation between the various parties involved in the zakat, tax and customs law, and playing an effective role in raising the efficiency of legal deliberations, thereby contributing to the achievement of the objectives of Saudi Vision 2030 by enabling swift justice and adopting the values of transparency and innovation, through supporting the Zakat, Tax and Customs Committees in the swift adjudication of disputes brought before them, providing support and assistance to committees at all stages by conducting studies and research, serving those responsible for clarifying regulations, decisions and judicial precedents, and updating them periodically.

The General Secretariat also placed special emphasis on the Final Decisions issued by the Committees, as they represent a summary of the established jurisprudence and are characterized by their constant possibility of development and change according to the developments in the real world, because their decisions are aimed at resolving disputes before the judicial committees.

Moreover, the knowledge of these decisions prevents disputes and conflicts, which is a prevention, protection and assistance to them in their stance before the Committees, including the project of classifying and tabulating the tax related Decisions issued by the Tax Committees.

This prestigious status of the Decisions calls for working to extract and disseminate them to the Public; to achieve the principle of transparency, highlight the ongoing efforts, and enrich the scientific arena; to make it a fertile ground for scholars, specialists, and research centers.

The Secretariat's role in disseminating these Decisions is an affirmation of its relentless endeavor to achieve all that would raise the level of justice as befits it, thanks to the support and guidance of the blessed leadership, which spares no effort in its generous support for the legislative and regulatory framework.

In conclusion, I would like to thank the Custodian of the Two Holy Mosques King Salman bin Abdul-Aziz and His Royal Highness Crown Prince Mohammed bin Salman bin Abdul-Aziz, Prime Minister, for their unlimited care and support for judicial activities in various fields. I would also like to thank the staff of the General Secretariat for their outstanding efforts in issuing this publication, which I hope will achieve its objectives and be a qualitative addition in the legal field.

Secretary-General

Abdullah bin Abdulrahman Alsuhaibani

## Methodology

The General Secretariat took care to select rulings that were comprehensive in nature and relevant to the merits to achieve the desired outcome. Given the importance of describing the cases before the zakat, tax and customs committees and their impact on the reasoning and basis for the decision, as this is the outcome sought by the parties to the case, and given the different facts and circumstances of tax cases, it was necessary to categorize the final tax decisions issued by the tax committees for the year 2024 AD so that researchers could review the committees' opinions on those defenses.

Based on the role of the General Secretariat of the Zakat, Tax and Customs Committees in adopting and applying the principles of continuous improvement and development in the management of Zakat, tax and customs disputes, with the aim of enabling the swift resolution of such disputes, care and attention has been given to classifying and publishing the final tax decisions issued by the tax committees. Accordingly, it was necessary to develop a comprehensive plan to publish these decisions in an easy and accessible manner. The process was divided into several stages, as follows:

- The tax decisions issued by the tax committees were thoroughly inventoried during 2024AD.
- Keywords have been set to make it easier to search through them.
- The name of the circuit issuing the decision, the number of the decision, and the date of issuance were listed.
- A summary of the case which summarizes the most important parts of the case was developed.
- Ensuring the deletion of all data indicating the parties to the lawsuit or other parties without affecting the Decision.
- Verifying the integrity of the Decision from a linguistic and spelling perspective.
- Categorizing the Decisions by subject matter and placing them under the most relevant category.
- In categorizing and indexing the resolutions thematically, the Secretariat relied on the topics of the Law and its executive regulations, so that the resolutions are listed according to their appearance in the Law and its executive regulations.



- The Secretariat relied on the methodology of excluding similar decisions, as the similarity criterion is that the terms of the decisions and the requests of the lawsuit and its judgment are the same, even if the parties differ.
- Strict compliance with the text of the decision, including its facts, grounds and operative part, without any addition or modification, except for spelling and grammatical errors.



# Procedural Decisions Issued by Tax Committees



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2023-136223

Case No. I-2022-136223

### Keywords

Income tax – Procedural – Proof of the end of the dispute – Acceptance of the Taxpayer's appeal procedurally

### Summary:

The Taxpayer's objection to the decision of the Second Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ISR-2022 -670) related to the tax assessment for the year 2015AD. Where the subject of Taxpayer's appeal is (capital gains) clause, explaining that the Authority did not reflect the amendment of the calculation in the statement of account, although it was made at the objection stage, where it demanded to amend the calculation of the cost basis in accordance with paragraph (7/9) of Article (16) of the Executive Regulations of the Income Tax Law. It also objected to the clause (delay fine) related to the capital gains clause. Whereas, the Appeal Committee established that the Authority modified the calculation of capital gains based on the contractual or market value, whichever is greater, and partially accepted the Taxpayer's objection to the delay fines resulting from capital gains. This means proving the end of the dispute in relation to the capital gains and delay fines clauses.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (70) of [The Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)
- Paragraph (7,9) of Article (16) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425 AH](#)



## Facts:



The submitted appeal was heard on: 06/07/2022AD, from/ ... National ID number (...) In its capacity as agent for the appellant company under the power of attorney No. (...), on the decision of the Second Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ISR-2022-670) issued in Case No. (I-2020-27944) related to the tax assessment for the year 2015AD, in the case filed by the appellant against the Zakat, Tax and Customs Authority, which adjudicated the following:

accepting the claim filed by the Plaintiff/...company, Commercial Register (...), against the decision of the Defendant/Zakat, Tax and Customs Authority, procedurally, and its rejection on the merits.

This decision was not acceptable to the Taxpayer (...Company), so it filed a list of appeals, which was reviewed by the Circuit and stated that the Taxpayer requests the acceptance of its appeal and the annulment of the decision of the adjudication circuit.

On Wednesday, 29/11/2023AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video conferencing in accordance with the procedures for remote video litigation; based on the provisions of Clause 2 of Article 15 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No: (26040) and dated: 21/04/1441AH; After reviewing the appeal request, the pleadings submitted, and the papers and documents in the case file, and after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

## Grounds:



Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, Article (70) of the Law of Sharia Pleadings issued by Royal Decree No. (M/1) dated 22/01/1435AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. Translate: "If the agreement is reached before recording the case, it is necessary to monitor the content of the case and the response before documenting the agreement, taking into account that the original case must be within the Circuit's jurisdiction, even if the content of the agreement falls under the jurisdiction of another court or circuit, provided that the subject matter of the case or part of it is among what was agreed upon." Based on



the foregoing, and whereas it has been established to this Circuit that the Authority requested confirmation of the end of the dispute according to what was stated in the letter issued by it in the supplementary memorandum and containing "1/ Regarding the Taxpayer's appeal on the capital gains clause: The Authority informs you of the amendment of the calculation at the objection stage, but it was not reflected in the statement of account, and it is based on what is stipulated in paragraph (7/9) of Article (16) of the Executive Regulations of the Income Tax Law that: "c- If the sold asset is a share in a partnership company, the selling value is determined by either the contractual value or the market value, whichever is greater, and it is compared with the cost basis of the asset to determine the capital gain." Accordingly, the Authority partially accepts the Taxpayer's objection by amending the calculation of the cost basis: foreign partner's share at 25.995% of net equity (book value) (141,054,015), contractual value (129,975,000), selling value: contractual or book value whichever is greater (141,054,015), (-) deduct his share in capital at 25.995% (129,975,000), difference - capital gains (11,079,015), capital gains tax 20% (2,215,803), and the Authority requests confirmation of the end of the dispute within the limits of what was mentioned above. 2/With regard to the Taxpayer's appeal against the delay fine clause arising from the capital gains clause: The Authority informs you that based on its partial acceptance of the capital gains clause, it partially accepts the Taxpayer's objection to the delay fines related to it, and requests proof of the end of the dispute", which requires the Circuit to prove the end of the dispute.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Accepting the appeal procedurally from the Taxpayer,... Company , commercial registration (...), unique number (...) Against the decision of the second circuit to rule on violations and disputes regarding income tax in Riyadh City with number (ISR-2022-670) issued in case number (I-272020944-27944) related to the tax assessment for the year 2015AD.

2- On the merits:

A- Proof of the end of the dispute regarding the Taxpayer's appeal on the clause (capital gains).

B- Proof of the end of the dispute regarding the Taxpayer's appeal on the clause (delay fines).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-170865

Case No. W-2023-170865

### Keywords

Income tax – Procedural – acquiring the final status – rejecting the Authority's appeal procedurally

### Summary:

Objection of the Zakat, Tax and Customs Authority to the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ITR-2022-6245) related to the tax assessment for the period 2014 AD, 2016AD. whereas the Appellate Committee proved from the case documents that the amount in dispute did not exceed (fifty thousand riyals), and whereas Article (42) of the working rules of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. 26040 dated 21/04/1441 AH stipulates that: "The decisions of the adjudication committee shall be finalized in the following cases: 1- Claims whose value does not exceed fifty thousand riyals. The consequence of this is the non-acceptance of the appeal on procedural grounds due to the Adjudication Circuit's decision acquiring final status.

### Document:

- Article (42) of [Rules of Procedure for the Committees for the Resolution of Tax Violations and Disputes, issued by Royal Decree No. \(26040\) dated 04/21/1441 A.H](#)

### Facts:

The submitted appeal was heard on: 19/01/2023AD, before/the Zakat, Tax and Customs Authority, on the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ITR-2022-6245) issued in Case No. (W-2020-29458) related to the tax assessment for the period 2014 AD-2016AD, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

Acceptance of the Plaintiff's objection/ ... company Commercial Register No. (...), On the decision of the Defendant/Zakat, Tax and Customs Authority procedurally, and the Defendant's decision is overturned on the merits.

This decision was not acceptable to the appellant (the Zakat, Tax and Customs Authority), so it filed a statement of appeals, which was reviewed by the Circuit and included the following statement: The Authority requests that its appeal be accepted and that the decision of the Adjudication Circuit be overturned.

On Sunday, 24/03/2024AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members, whose names are recorded in the minutes, through video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No. (25711) dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

#### Grounds:

after reviewing the working rules of the committees for adjudicating tax violations and disputes issued by Royal Decree No. (26040) dated 21/4/1441 AH. and related regulations. Whereas it is established from the decision under appeal and from the case documents that the amount in dispute did not exceed (fifty thousand riyals), and whereas Article (Forty-Two) of the Rules of Work for Tax Violations and Disputes Adjudication Committees issued by Royal Decree No. (26040) dated 21/40/1441 AH stipulated that "the decisions of the Adjudication Committee acquire final status in the following cases: 1- Lawsuits whose value does not exceed (fifty thousand) riyals. " Whereas the value of this lawsuit did not exceed the amount of fifty thousand riyals, the matter is concluded with this Circuit to acquire the decision of the Adjudication Circuit for the final status, and therefore it is among the non-appealable decisions, and accordingly it was decided by this Circuit not to accept the appeal of the Authority procedurally.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

Inadmissibility of the appeal request procedurally of the appellant/Zakat, Tax and Customs Authority, against the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ITR-2022-6245) issued in Case No. (W-2020-29458) related to the tax assessment for the period 2014 AD, 2016 AD, in order to acquire the decision of the adjudication circuit for the final status.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-170676

Case No. I-2023-170676

### Keywords

Income tax – Procedural – previously adjudicated – acceptance of the Authority's appeal procedurally

### Summary:

The Zakat, Tax and Customs Authority's objection to the decision of the Third Circuit for adjudicating income tax violations and disputes in Riyadh (ITR-2022-6249) regarding the tax assessment for 2009AD. Whereas, the Authority's appeal lies in the reversal of the decision of the Trial Circuit, which decided to cancel its decision on the merits and accept the objection of the Plaintiff (... company). Whereas the Appeals Circuit has established that the subject matter of the lawsuit has already been decided by the First Appeals Circuit for Income Tax Violations and Disputes by virtue of the decision No. (IR-2024-170675) issued in the appeal registered No. (I-2023-170675), and since it was decided in jurisprudence that it is not permissible to consider a lawsuit that has already been decided by a final judgment. This means accepting the appeal procedurally, canceling the decision of the Trial Circuit and ruling prior to the adjudication of the case.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (76) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)

### Facts:

The submitted appeal was heard on: 19/01/2023 AD, from the Zakat, Tax and Customs Authority, on the decision of the Third Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (ITR-2022-6249) issued in Case No. (I-2021-63165) related to the tax assessment for 2009 AD, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows: Zakat, Tax and Customs Authority:

accept the Plaintiff's objection..... (Commercial Registration No . ...), on the decision of the Defendant/Zakat, Tax and Customs Authority procedurally terms, and the cancellation of the Defendant's decision in substantive terms.

This decision was not acceptable to the appellant (the Zakat, Tax and Customs Authority), so it filed a list of appeals, which was reviewed by the Circuit and included the following statement: The Authority requests that its appeal be accepted and that the decision of the Adjudication Circuit be overturned.

on Monday, 26/02/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video conferencing in accordance with the procedures for remote video litigation; based on the provisions of Clause 2 of Article 15 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441 AH; after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

since the examination of the jurisdiction to hear this case is one of the preliminary issues before considering its merits, the Circuit shall determine the extent of its jurisdiction to hear the case, and once it finds that it is outside its jurisdiction, it must rule on its own initiative that the case cannot be heard, and Article (76) of the Sharia Procedure Law stipulates that: "... "The defense of inadmissibility of hearing the case due to prior adjudication (res judicata) may be raised at any stage of the proceedings, and the Circuit shall rule on it of its own accord..." Since it is established that the subject matter of the case was previously adjudicated by the First Appeals Circuit for Income Tax Violations and Disputes pursuant to Decision No. (IR-2024-170675) issued in Appeal No. (I-2023-170675), and since it is established in jurisprudence and case law that it is not permissible to hear a case that has been previously decided by a final judgment except after its annulment or review in accordance with the law; as this would undermine the authority of judicial decisions and destabilize their finality, leading to endless succession, weakening the position of the judiciary before all parties, in addition to the disruption it causes during execution and differences in application. The inadmissibility of hearing a case due to prior adjudication is nothing more than the negative effect resulting from the authority of res judicata, which prevents the re-examination of the same dispute that was resolved by a final judicial decision before any other court in an original action raising the same dispute, provided that both the prior and subsequent cases have unity of parties, subject matter, and cause of action. Based on this, the Circuit concludes with the judgment stated in its operative part and hereby rules accordingly.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:



### Decision:

1- Accepting the appeal procedurally of the appellant/Zakat, Tax and Customs Authority, against the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ITR-2022-6249) issued in Case No. (I-2021 -63165) related to the tax assessment for the year 2009 AD.

2- On the merits:

Cancellation of the decision of the Adjudication Circuit and the ruling preceding the adjudication of the case.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-193953

Case No. ZW-2023-193953

Keywords

Income tax – Procedural – Appeal against the petition for reconsideration - Rejection of the Taxpayer's appeal procedurally

Summary:

The Taxpayer's objection to the decision of the First Appeal Circuit for Income Tax Violations and Disputes No. (IR-2023-167473) related to the tax tax assessment for the years 2003 AD to 2010 AD. The appeal of the person in charge of reversing the decision of the Appeals Circuit regarding the inadmissibility of the petition for reconsideration filed by the person in charge. Whereas the Appeal Committee has established that the decisions of the Appeal Committees are final and not subject to objection before any other judicial authority, in accordance with the text of Article (47) of the Rules of Work of the Committees for the Resolution of Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/4/1441AH, and whereas the objection submitted relates to the decision of the petition for reconsideration issued by the Appeals Circuit itself. This means that the objection is not accepted procedurally.

Document:

- Article (47) of [Rules of Procedure for the Committees for the Resolution of Tax Violations and Disputes, issued by Royal Decree No. \(26040\) dated 04/21/1441 A.H](#)

Facts:

the appeal filed on 29/04/2023 AD, from / ... company , the decision of the First Appeal Circuit for Income Tax Violations and Disputes No. (IR-2023-167473) issued in Case No. (ZW-2023-167473) related to the tax tax assessment for the years 2003 to 2010, filed by the petitioner against the Zakat, Tax and Customs Authority, in which the decision of the Appeal Circuit ruled the following:

Inadmissibility of the petition for reconsideration submitted by the ... company , Commercial Registration No. (...), unique number (...) Against the decision of the First Appeal Circuit for Income Tax Violations and Disputes No. (IR-2022-1154) issued in Case No. (Z-2020-27756) related to the tax tax assessment for the years from 2003 AD to 2010 AD, from a procedural point of view, according to the grounds and justifications mentioned in this decision.





since this decision was not accepted by the Taxpayer (... company ), he filed a Petition for Reconsideration, which was reviewed by the Circuit and included its claim to overturn and overturn the Appeals Circuit's decision.

on Thursday, January 11, 2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video conferencing in accordance with the procedures for remote video litigation; based on the provisions of Article 15, Clause No. (2) of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441AH; after reviewing the petition request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

#### Grounds:

the Circuit considered the merits of the dispute, and after reviewing the papers and documents contained in the case file, and where Article (47) of the working rules of the committees for resolving tax violations and disputes issued by Royal Decree No. 26040 dated 21/4/1441 AH stipulates that: the decisions of the Apellate Committee shall be final and not subject to appeal to any other judicial body." based on the foregoing, and given that the appeal in question was filed against a reconsideration decision issued by this Circuit, and given that the decisions of the Apellate Committee are final and not subject to appeal before any other body , the Circuit concludes that the appeal is inadmissible procedurally pauperis.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

Inadmissibility of the appeal submitted by the Taxpayer/ ... company, Commercial Registration No. (...), unique number (...), on the decision of the First Appellate Circuit for Income Tax Violations and Disputes No. (IR-2023-167473) issued in Case No. (ZW-2023-167473) related to the tax tax assessment for the years from 2003 AD to 2010 AD, according to the grounds and justifications mentioned in this decision.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-191403

Case No. I-2023-191403

### Keywords

Income tax – Procedural – lapse of the statutory period – rejection of the Taxpayer's appeal procedurally

### Summary:

The Taxpayer's objection to the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6586) related to the tax assessment for 2016 AD. Where lies the appeal of the person in charge of revoking the decision of the Adjudication Circuit, which ruled that the case is not admissible procedurally, on the pretext that there are legal justifications that require a review of the decision. Whereas, it has been proven to the Appeal Committee that the period prescribed for appealing the decisions issued by the circuits of the Committee for the Resolution of Tax Violations and Disputes, in accordance with the text of paragraph (2) of Article Forty of the Rules of Work of the Committees for the Resolution of Tax Violations and Disputes, is thirty days starting from the day following the date specified for receiving the decision. Since the Taxpayer notified the decision through the automated system of the General Secretariat (Hayyad) on 01/03/2023 AD, and submitted an appeal on 03/04/2023 AD, the appeal is considered submitted after the expiry of the period specified by law. This means that the appeal is not accepted procedurally for submission after the expiry of the statutory period.

### Document:

- Paragraph (2) of Article (40) of [Rules of Procedure for the Committees for the Resolution of Tax Violations and Disputes, issued by Royal Decree No. \(26040\) dated 04/21/1441 A.H](#)

### Facts:

the appeal filed on 03/04/2023 AD, from (...), National ID No. (...) In its capacity as the owner of the appellant institution under the Commercial Register, on the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6586) issued in Case No. (I-2022-97383) related to the tax assessment for the year 2016 AD, filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

the case is inadmissible in procedurality.

this decision was not accepted by the Taxpayer (an organization ... he filed a list of appeals in which it demanded that the Adjudication Circuit's decision be reversed and annulled.

on Sunday, 02/06/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures of remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No.: (25711) and dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

after reviewing the working rules of the committees for adjudicating tax violations and disputes issued by Royal Decree No. (26040) dated 21/4/1441 AH. and related regulations.

the Circuit considers the merits of the dispute, and since the period prescribed for appealing the decisions issued by the Circuits of the Tax Violations and Disputes Adjudication Committee in accordance with the text of paragraph (2) of Article (40) of the working rules of the Tax Violations and Disputes Adjudication Committees is (30) days starting from the day following the date specified for receiving the decision, and since it is proven from the documents of the case the Taxpayer was informed of the decision of the Adjudication Circuit via the automated system of the General Secretariat for Zakat, Tax and Customs Committees (Hayyad) on 01/03/2023 AD, and filed an appeal on 03/04/2023 AD, which makes the appeal submitted after the expiration of the statutory period, which leads the Circuit to conclude that the appeal is not accepted procedurally because it was submitted after the expiration of the statutory period.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

Inadmissibility of the appeal procedurally, submitted by the Taxpayer/ ... , Commercial Registration No. (...), unique number (...) Against the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6586) issued in Case No. (I-2022-97383) related to the tax assessment for the year 2016 AD, in order to submit it after the expiry of the period specified by law.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-168533

Case No. I-2023-168533

### Keywords

Income Tax – Procedural – Acceptance of the discontinuance of the case – Acceptance of the Authority's appeal

### Summary:

Objection of the Zakat, Tax and Customs Authority to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2396) regarding the tax assessment for 2014 AD. Whereas, the Appeal Committee has established the Authority's request to abandon the appeal in accordance with what was stated in the letter issued by it in the supplementary memorandum, which includes "The Authority would like to inform the esteemed Circuit to abandon its appeal with regard to the clauses contained in the appeal memorandum and the procedures resulting from the Authority's appeal, given the end of the dispute with the Taxpayer and the payment of the Taxpayer with the outcome of the minutes signed between the two parties. ". This means accepting the abandonment of the litigation.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (70) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)

### Facts:

The submitted appeal was heard on: 10/01/2023 AD, from/the Zakat, Tax and Customs Authority, on the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2396) issued in Case No. (I-2021-39754) related to the tax assessment for the year 2014 AD, in the case filed by the branch of the ... company against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

- 1- Rejection of the Plaintiff's objection regarding the clause of net labor profits on the company's sponsorship.
2. Amendment of the Defendant's decision regarding the Contractors' Costs Clause.
- 3- Amending the Defendant's decision regarding the clause of business development costs.
- 4- Amending the Defendant's decision regarding the clause of hired labor costs.
5. Amend Defendant's decision regarding late payment fine.

This decision was not acceptable to the appellant (the Zakat, Tax and Customs Authority), so it filed a list of appeals, which was reviewed by the Circuit and included the following statement: The Authority requests that its appeal be accepted and that the decision of the Adjudication Circuit be overturned.

on Thursday, January 25, 2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video conferencing in accordance with the procedures for remote video litigation; based on the provisions of Article 15, Clause No. (2) of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441 AH; after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

Article (70) of the Sharia Procedure Law promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement occurs before the seizure of the lawsuit, it is necessary to monitor the content of the lawsuit and respond before recording the agreement, taking into account that the origin of the lawsuit is within the jurisdiction of the circuit, even if the content of the agreement is within the jurisdiction of another court or circuit, provided that the subject of the lawsuit or some of it is among the agreed upon," and based on the foregoing, and where it is proven to this Circuit that the request of the authority to leave the appeal is in accordance with what is stated in the letter issued by it in the supplementary memorandum, which includes "The authority wishes to inform the esteemed Circuit to leave its appeal regarding the clauses contained in the appeal memorandum and the procedures resulting from the appeal of the authority, given the end of the dispute with the Taxpayer and the payment of the Taxpayer, as the minutes signed between the two parties concluded. therefore, the Circuit shall accept the abandonment of the litigation.



On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

Accepting the abandonment of the litigation in the appeal submitted by the Zakat, Tax and Customs Authority, against the First Circuit's decision to adjudicate income tax violations and disputes in the city of Dammam No.(IZD-2022-2396) issued in Case No. (I-2021-39754) related to the tax assessment for the year 2014 AD, according to the grounds and justifications mentioned in this decision.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-177651

Case No. I-2023-177651

### Keywords

Income tax – Procedural – As if never existed – rejecting the Taxpayer's appeal

### Summary:

The Taxpayer objected to the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2713) related to the tax assessment for 2017 AD, which ruled to cancel the case and consider it as if it had not been. Whereas, the Appeal Committee has established that the cancellation of the lawsuit and considering it as if it were not a decision that has no effect from a procedural or substantive point of view on the subject of the dispute can be appealed, based on Article (20) of the Rules of Work of the Committees for the Resolution of Tax Violations and Disputes, which allows the Taxpayer to file a new lawsuit to be registered with the Classification Circuit. This means that the appeal is not accepted.

### Document:

- Article (20) of [Rules of Procedure for the Committees for the Resolution of Tax Violations and Disputes, issued by Royal Decree No. \(26040\) dated 04/21/1441 A.H](#)

### Facts:

the appeal filed on 12/02/2023 AD, from/... National ID number (...) In its capacity as agent for the appellant company under the attached power of attorney, and the lawyer's license No. (...), the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2713) issued in Case No. (I-2022-90935) related to the tax assessment for the year 2017 AD, filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

Cancellation of the lawsuit and considering it as if it did not exist.

since this decision was not accepted by the Taxpayer (... company), it filed an appeal list in which it demanded the reversal and annulment of the decision of the Adjudication Circuit.



on Sunday, 24/03/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes met via videoconferencing in accordance with the procedures for remote videoconferencing; based on the provisions of Clause 2 of Article 15 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit found no reason to require the presence of the parties to the appeal, the Circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

After reviewing the working rules of the committees for adjudicating tax violations and disputes issued by Royal Decree No. (26040) dated 21/4/1441 AH. and related regulations.

the Circuit considered the merits of the dispute, and after reviewing the challenged decision that was issued to strike out the case and deem it as if it never existed, and where Article 20 of the Rules of Work of the Committees for Adjudicating Tax Violations and Disputes stipulates that "If the Plaintiff fails to appear at any session that has been notified to him on the date set for its consideration and does not present an excuse acceptable to the Circuit, it must adjudicate the case if it is ready to adjudicate it. 2 if the case is not ripe for adjudication, the Circuit shall strike out the case, and if the period of thirty (30) days from the date of striking out the case expires and the Plaintiff does not request to proceed with the case after it has been struck out or does not appear after the case has been reopened at any other session, the case shall be considered as if it was not filed, and the Plaintiff may - without prejudice to the time limit for hearing the case - file a case with a new entry." the decision to deem the case as not having been filed is not a decision that has a procedural or substantive impact On the merits of the dispute to be appealed, as the person against whom a decision was issued to dismiss the case as not having been filed may file a case with a new entry with the Adjudication Circuit, which determines that the appeal is inadmissible by this Circuit.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

Inadmissibility of the appeal submitted by the Taxpayer/ ... company , Commercial Registration No. (...), unique number (...) Against the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2713) issued in Case No. (I-2022-90935) related to the tax assessment for the year 2017 AD, in accordance with the grounds and justifications contained in this decision.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-171076

Case No. Z-2023-171076

### Keywords

Income tax – Procedural – without capacity – rejection of the Taxpayer's appeal

### Summary:

The Taxpayer's objection to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2476) related to the tax assessment for the years 2015 AD, 2016 AD and 2017 AD, which ruled to reject the Taxpayer's objection in all the clauses in question. Where lies the appeal of the person charged with accepting its request and overturning the decision of the Adjudication Circuit. Whereas, it was proven to the Appeal Committee that the appeal list submitted by the Taxpayer was not signed and the name of the applicant was not indicated in it, which is considered a violation of the condition of capacity necessary to hear the lawsuit, based on Article (76) of the Sharia Pleadings Law and Article (7) of the Work Rules of the Committees for the Settlement of Tax Violations and Disputes, which require that representation be in accordance with the provisions of the Lawyers Law and its Executive Regulations. This means that the appeal is not accepted procedurally to be filed without capacity.

### Document:

- Article (7) of [Rules of Procedure for the Committees for the Resolution of Tax Violations and Disputes, issued by Royal Decree No. \(26040\) dated 04/21/1441 A.H](#)
- Article (76) of [The Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)

### Facts:

The submitted appeal was heard on: 23/01/2023AD, from/ branch of a ... company Commercial Register No. (...) Without attaching any document proving the capacity of the Plaintiff, on the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2476) issued in Case No. (I-2021-72839) related to the tax assessment for the years 2015 AD, 2016 AD and 2017 AD, in

the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

Rejection of the Plaintiff's objection in all the clauses in question for the years from 2015 AD to 2017 AD.

this decision was not acceptable to the Taxpayer (... company), so it filed a list of appeals, which was reviewed by the Circuit and included the following statement: The Taxpayer requests the acceptance of its appeal and the reversal of the decision of the Adjudication Circuit.

on Monday, 19/02/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video conferencing in accordance with the procedures for remote video litigation; based on the provisions of Clause 2 of Article 15 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441 AH; after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

The Circuit hopes for the appeal of the Taxpayer, and after examining the case file, and where ascertaining the status of the parties to the lawsuit is one of the preliminary matters that are decided before entering into its subject matter, which is ruled by the Circuit on its own initiative, in accordance with Article (76) of the Sharia Pleadings Law, which stipulates that: "Pleading that the Circuit does not have jurisdiction because of the absence of jurisdiction or because of the type or value of the lawsuit, or pleading that the lawsuit is inadmissible because of lack of capacity, capacity, interest, or any other reason, as well as pleading that the lawsuit may not be considered because it has already been decided; it may be pleaded at any stage where the lawsuit is adjudicated by the Circuit on its own initiative." Based on paragraph (3) of Royal Decree No. (M/66) dated 15/07/1443AH, where the rules of work of the committees stipulated in Article (7) thereof that: " The representation of the parties to the lawsuit shall be in accordance with the provisions contained in the Advocacy Law and its executive regulations.", Whereas the company submitted an appellate list that is unsigned and does not indicate the name of the applicant, which means that the Circuit shall not accept the appeal procedurally to be filed without capacity.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

The non-acceptance of the appeal in the form of the applicant/ branch of the ...company, Commercial Registration No. (...), Unique Number (...), against the decision of the First Circuit for Adjudication of Income



Tax Violations and Disputes in Dammam City No. (IZD-2022-2476) issued in Case No. (I-2021-72839) related to the tax assessment for the years 2015 AD, 2016 AD, and 2017 AD, for being filed by a party without legal capacity.



# Subjective Decisions Issued by Tax Committees

## (Taxable Income)



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-178241

Case No. I-2023-178241

### Keywords

Income tax – taxable income – import profits – rejection of the Taxpayer's appeal – acceptance of the Authority's appeal

### Summary:

The Taxpayer and the Zakat, Tax and Customs Authority objected to the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6904) related to the tax assessment for the year 2015 AD, where the Taxpayer's appeal lies on the clause (import profit),(bad debt expense),(tips and bonuses), (delay fines),(undiscounted expenses),(requesting the decision to be reversed and canceled). The Authority's appeal on the clause (Import profit for the year 2015 AD) lies in its addition of the import profit difference to the adjusted net profit due to the difference between what is stated in the foreign purchases in the customs declaration and what is stated in the declaration. Whereas it has been proven to the Appeal Committee that the decision of the Adjudication Circuit ended in amending the Authority's procedure for the entire clause based on the failure of the Taxpayer to submit the documents supporting this part of the disputed clause at the adjudication stage, which shows support for the Authority's procedure. This means accepting the Authority's appeal procedurally and in part in the matter, and supporting the amendment of the decision of the Trial Circuit in accordance with what has been proven to the Committee.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (2) of Article (40) of [Rules of Procedure for the Committees for the Resolution of Tax Violations and Disputes, issued by Royal Decree No. \(26040\) dated 04/21/1441 A.H](#)
- Article (70) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)

- Paragraph (1,7) of Article (9) of [The Executive Regulations of the Income Tax Law issued by the Minister of Finance's Decision No. \(1535\) dated 11/06/1425H](#)

### Facts:



the appeal filed on 14/02/2023 AD from the Zakat, Tax and Customs Authority, and the appeal filed on 12/04/2023 AD from ... and Lawyer's License No. (...), on the decision of the Third Circuit for the Adjudication of Income Tax Violations and Disputes in Riyadh (IFR-2022-6904) issued in Case No. (I-2021-86515) related to the 2015 AD tax assessment, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

First: Accept the Case procedurally.

il: On the merits: as follows:

- (a) Amending the Defendant's procedure in the import profit clause.
- (b) Amending the Defendant's procedure in the clause of bad debts expense.
- (c) Amending the Defendant's procedure regarding tips and bonuses.
- (d) Rejecting the Plaintiff's objection regarding social insurance teams.
- (e) Rejecting the Plaintiff's objection to the delay fines clause.
- (f) Rejecting the Plaintiff's objection to undiscounted expenses.
- (g) Rejecting the objection of the Plaintiff in the clause of salaries and wages.
- (h) Amending the Defendant's procedure in the delay fines clause.

Whereas this decision was not accepted by the Taxpayer (factory ...), it submitted an appeal statement that was reviewed by the Circuit, as it included its claim to overturn and cancel the decision of the Adjudication Circuit. This decision was also not accepted by the appellant (Zakat, Tax and Customs Authority), so it submitted an appeal list that was reviewed by the Circuit, where the Authority's appeal lies on the clause (import profit for 2015 AD (foreign purchases received by the ... company)) The Authority clarifies that it has added the import profit difference to the adjusted net profit due to the difference between what was stated in the foreign purchases in the customs declaration and what was stated in the declaration. The Authority compared the foreign purchases according to what was stated in the customs declaration and what was stated by the Taxpayer in its declaration, and by reviewing what was submitted during the objection stage and studying it, the following was found: First: Purchases received at customs during 2015 AD and recorded in the Taxpayer's accounts in 2016 AD in the amount of (685,002 riyals). The Taxpayer submitted a statement without providing proof of registration in the company's accounts for 2016. il: External purchases of fixed assets in the amount of (567,637 riyals) were accepted during the assessment



ing phase and its acceptance is indicated in the calculation of the Authority in the above table. Third: External purchases received by the company... In the amount of (SAR 3,760,817), the Taxpayer submitted a statement in the external purchases received for the ... company (Related party) without providing a certificate from a ... company According to the receipt of foreign purchases on its behalf and did not provide evidence of the registration of foreign purchases in the accounts of the company..., and therefore the objection of the Taxpayer was rejected based on Article (57) of the Executive Regulations of the Income Tax Law and the Authority confirms the validity and integrity of its procedure. Regarding the clause (general and administrative expenses - tips and bonuses): A- With regard to (general and administrative expenses - gratuities and bonuses in the amount of 14,644 riyals), b- with regard to (the value of the tax amounting to 2,928.80 riyals), the Authority clarifies that during the objection stage, the Taxpayer submitted proof that they are local schools and the Taxpayer did not submit employee contracts to verify that they are stipulated in the employment contract based on Article IX, paragraph (7) of the Executive Regulations of the Income Tax Law. Therefore, that clause was rejected, and it indicated that the circuit issuing the decision subject of appeal amended the Authority's decision, as the dispute is documentary, and the Authority responds that after referring to the Taxpayer's submission, it was found that it submitted a statement of expenses that is school expenses and a commission, and submitted an employment contract to the employee (...) It was found that this benefit is stipulated in the contract, and a letter was submitted by schools ... That the son of ... Among its students, I attach a copy of the disbursement checks (2) with a total amount of (14,200) riyals. Accordingly, the Authority appeals against the amounts for which the rest of the documents related to it have not been submitted, which relate to the sale commission (...) In the amount of (8,644) riyals and schools ... With an amount of (6,000) riyals with a total amount of (14,644) riyals and the value of the tax (2,928.80) riyals, based on Article (57) Paragraph (3) of the Executive Regulations of the Income Tax Law. With regard to the clause (delay fine), the Authority clarifies that the delay fine was imposed on the unpaid tax differences on the regular date based on paragraph (a) of Article (77) of the Income Tax Law as well as based on paragraph (1/b) of Article (68) of the Executive Regulations of the Income Tax Law. The fine is consequential and due to the Authority's appeal on the above clause, it adheres to the validity of its procedure in imposing the delay fine on the unpaid tax differences. it requests that its appeal be accepted and the decision of the Adjudication Circuit be reversed and annulled.

on Monday, 03/06/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No. (25711) and dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

## Grounds:



Whereas, regarding the Taxpayer's appeal, and after reviewing the work rules of the committees for the settlement of tax violations and disputes issued by Royal Decree No. (26040) dated 21/4/1441AH. and related regulations.

the Circuit considers the merits of the dispute, and since the period prescribed for appealing the decisions issued by the Circuits of the Tax Violations and Disputes Adjudication Committee in accordance with the text of paragraph (2) of Article (40) of the working rules of the Tax Violations and Disputes Adjudication Committees is (30) days starting from the day following the date specified for receiving the decision, and since it is proven from the documents of the case the Taxpayer was informed of the decision of the Adjudication Circuit via the automated system of the General Secretariat for Zakat, Tax and Customs Committees (Hayyad) on 15/01/2023 AD, and filed an appeal on 12/04/2023 AD, which makes the appeal submitted after the expiration of the statutory period, which leads the Circuit to conclude that the appeal is not accepted procedurally because it was submitted after the expiration of the statutory period.

whereas, with regard to the Authority's appeal, upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations, and decisions, which means that the appeal is procedurally accepted because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and with regard to the Authority's appeal on the clause (Import profit for the year 2015 AD) (External purchases received from a ... company), and where the Authority's appeal lies in adding the difference of import profit to the adjusted net profit due to the difference between what is stated in the customs declaration and what is stated in the declaration, and based on paragraph (1/a) of Article 9 of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425 AH and its amendments, which stipulates that "1- All ordinary and necessary expenses to achieve taxable income, whether paid or due, provided that the following controls are met: (a) It is an actual expense supported by supporting documents or other evidence that enables the authority to verify its validity.", and based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, which stipulates the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. (c) It must be related to the tax year, and it must not be of a capitalistic nature. "Upon the return of the circuit to the case file, and after reviewing it, it was found that the decision of the Adjudication Circuit ended up amending the authority's procedure for

the entire clause based on the Taxpayer's failure to submit the documents supporting this part of the disputed clause at the adjudication stage, which shows support for the authority's procedure, which leads the circuit to partially accept the authority's appeal and amend the Adjudication Circuit's decision in the amount of (3,760,817 riyals).

Regarding the Authority's appeal on the clause (general and administrative expenses - tips and bonuses): A- With regard to (general and administrative expenses - gratuities and bonuses in the amount of 14,644 riyals), and where the Authority's appeal lies on the amounts that the Taxpayer has not submitted the rest of the documents related to them, and based on paragraph (7) of Article (9) of the Income Tax Law relating to expenses that may be deducted, provided that: Expenses that may be deducted: 7- School expenses for the children of the Taxpayer's employees whenever the following controls are met: (a) Be paid to an authorized local school. (b) That this benefit is expressly stipulated in the employment contract."Based on the above, and after considering the entire pleas of the two parties and the outcome of the adjudication decision regarding this clause, and since the dispute is documentary in its subject matter, and where it becomes clear to the Circuit that the Taxpayer submitted a statement of expenses, which is school expenses and a commission with a total of (28,844) riyals, and submitted an employment contract to the employee (...) It was found that this benefit is stipulated in the contract (disbursed according to the approval of the Director General), and a letter was submitted by schools ... It is reported that the children of (...) Among its students, I attach copies of the disbursement checks with a total amount of (14,200) riyals. Accordingly, the Authority appeals against the amounts for which the Taxpayer did not submit the relevant documents (sale commission... In the amount of 8,644 riyals and schools ... With an amount of (6,000 riyals) with a total amount of (14,644) riyals, which is the remainder of the clause in dispute, and after the Circuit's examination of the case file, it was found that the Taxpayer did not submit those supporting documents, and since the burden of proof in this case lies on the Taxpayer to prove the validity of these expenses, which ends with the Circuit partially accepting the Authority's appeal and amending the decision of the circuit of (14,644) riyals. B- With regard to the Authority's appeal regarding (the value of the tax amounting to 2,928.80 riyals), and after reviewing the Circuit, it found that this clause in dispute was not included in the list of objection of the Taxpayer before the dismissal on 22/9/2021 AD, as it was not included in the response memorandum of the Authority (1) before the adjudication committee, which ends with the Circuit dismissing this clause

With regard to the Authority's appeal on the clause (delay fine), and where the Authority's appeal lies in its imposition of a delay fine on unpaid tax differences on the regular date, and based on paragraph No. (3) of Article (57) of the Executive Regulations of the Income Tax Law, which stipulates the following: "3. The burden of proving the validity of the revenues, expenses and any other data stated in the Taxpayer's declaration shall fall on the Taxpayer. In the event that the Taxpayer is unable to prove the validity of what is stated in its declaration, the Authority may, in addition to applying any other statutory sanctions, not allow



the expenditure whose validity is not proven by the Taxpayer or make an estimated assessment in accordance with the point of view of the Authority in the light of the circumstances and facts related to the case and the information available to the Authority." Based on the foregoing, and the Circuit's reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Defendant, and since the dispute between the two parties is a documentary dispute, and did not result in a significant difference in the interpretation of the statutory texts, which ends with the Circuit partially accepting the Authority's appeal and amending the decision of the Adjudication Circuit by imposing the delay fine from

Regarding the Authority's appeal on the clause (import profit for the year 2015 AD (foreign purchases of fixed assets in the amount of 567,637 riyals), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement occurs before the lawsuit is seized, it is necessary to monitor the content of the lawsuit and respond before the agreement is recorded, taking into account that the origin of the lawsuit is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or circuit, provided that the subject matter of the lawsuit or some of it is among the agreed upon," and based on the foregoing, and where it is proven to this Circuit that the Authority's request to leave the appeal according to what is stated in the letter issued by it in the supplementary memorandum, which includes "external purchases of fixed assets in the amount of (567,637 riyals) accepted during the assessment ing stage and its acceptance is clarified in the Authority's calculation in the above table", which the Circuit shall accept the abandonment of the litigation.

With regard to the appeal of the Authority on the clause (Import profit for the year 2015 AD (Purchases received at customs during the year 2015 AD and registered in the accounts of the Taxpayer in 2016 AD), and since there is no implication on the Circuit to take into account the grounds for the decision in question without adding to it whenever it estimated that these grounds dispense with the income of any new, because in its support for it, including those grounds, it is confirmed with him that it did not find in the decision more worthy of a response than those grounds included, and since it was established that the decision in question regarding the dispute regarding the clauses in question was consistent with the justifiable grounds on which it was based and sufficient to carry its judiciary, as the exporting Circuit examined the dispute and concluded with its conclusion in its operative part, and where this Circuit did not notice what warranted redress or comment on it in the light of the arguments raised before it, which leads this Circuit to reject the appeal

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

First: Procedurally:

- 1- The non-acceptance of the appeal in the form of the assigned applicant/ factory ... Commercial Registration No. (...), a unique number (...), against the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6904) issued in Case No. (I-2021-86515) related to the tax assessment for the year 2015 AD, in order to submit it after the expiry of the period specified by law.
- 2- Acceptance of the appeal procedurally from the Zakat, Tax, and Customs Authority against the decision of the third circuit regarding violations and disputes of income tax in Riyadh numbered (IFR-2022-6904) issued in case number (I-2021-86515) related to the tax assessment for the year 2015AD.

Second: On the merits:

- 1- Rejection of the Authority's appeal and amendment of the decision of the Adjudication Circuit regarding the clause (Import profit for 2015 AD (purchases received at customs during 2015 AD and registered in the accounts of the Taxpayer in 2016 AD).
- 2- Acceptance of the abandonment of the litigation in relation to the Authority's appeal on the clause (Import profit for 2015 AD (external purchases of fixed assets in the amount of 567,637 riyals)).
- 3- Accepting the Authority's appeal in part and amending the decision of the Adjudication Circuit regarding the clause (Import profit for the year 2015 AD (External purchases received for the ... company)).
- 4- Regarding the Authority's appeal on the clause (general and administrative expenses - tips and bonuses):
  - A- Accepting the appeal of the Authority in part and amending the decision of the Adjudication Circuit regarding (general and administrative expenses - tips and bonuses in the amount of 14,644 riyals).
  - B- Notwithstanding the Authority's appeal regarding (the value of the tax amounting to 2,928.80 riyals):
  - c- Accepting the Authority's appeal in part and amending the decision of the Adjudication Circuit with regard to the delay fine clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-176557

Case No. IW- 2023-176557

Keywords

Income Tax – Taxable Income – Estimated Earnings – Acceptance of Taxpayer Appeal

Summary:

The Taxpayer's objection to the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6720) related to the tax assessment for the years from 2011 AD to 2017 AD. The Taxpayer's appeal lies in several clauses (imposing income tax on equipment supply revenues), provided that the revenues are not subject to tax because they do not emanate from a source within the Kingdom. He also attached a summary of the invoices and supporting documents to confirm its position. The clause (income tax on unspecified revenues) requires the Taxpayer to cancel the tax assessment on the excess revenues for the years 2014 AD, 2015 AD and 2017 AD, explaining that the Authority relied on inaccurate data. (Withholding tax on discretionary dividends) The Taxpayer objects to the tax assessment on the discretionary dividends, explaining that it resulted from the inclusion of the revenues of the supply of equipment within the total revenues. The Taxpayer has submitted a new detailed authentication to support their objection. A clause (delay fine) stipulates that the delay in determining the tax liability is caused by the Authority and not by the Taxpayer. Whereas, it has been proven to the Appeal Committee that the Taxpayer has submitted sufficient documents and defenses related to some of the clauses that have been appealed, which has led to the acceptance of the Taxpayer's appeal.

Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (2) of Article (71) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (a,b) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (7) of Article (5) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)



- Paragraph (1) of Article (63,67) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)
- Paragraph (3) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)

### Facts:



The appeal was considered on 02/07/2023 AD, from/ branch of a ... company Commercial Register (...), on the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6720) issued in Case No. (IW-2021-87544) related to the tax assessment for the years 2011 AD to 2017 AD, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

First: Acceptance of the Plaintiff's objection/ ... company Non-resident (Commercial Registration No. (...)) on the decision of the Defendant/Zakat, Tax and Customs Authority in terms of procedurality.

Secondly: On the merits:

- A- Evidence of the end of the dispute in relation to the clause (deduction of amounts paid against income tax and withholding tax).
- B- reject all other objections.

since this decision was not accepted by the Taxpayer (a ... company non-resident), filed a statement of appeal that included the following summary:

The Taxpayer objects to the decision of the Adjudication Circuit in question, it claims that with regard to the clause (imposing income tax on the total revenues related to the supply of equipment for the years ended December 31, 2011 AD to 2017 AD), as the appellant (the Taxpayer) demands the cancellation of the circuit's decision on this clause on the basis that the Taxpayer has been able to process the following supporting documents by the ... company Under the tax assessment issued by the Authority, the Authority imposed an additional income tax on the total revenues achieved by the permanent establishment related to the supply of equipment for the years from 2011 AD to 2017 AD. Therefore, the Taxpayer submitted in its regulations a settlement of the revenues related to the purchase of equipment with the amount of revenues as stated in the Authority's assessment. Based on the above, it will be clear that the ... company The value of the revenues associated with the supply of equipment has already been confirmed for the years 2011 AD-2017 AD. The Taxpayer shall rely on Article 5, paragraph(7) of the Executive Regulations of the Income Tax Law, and the clarification of the Authority regarding whether the contracts for the supply of equipment are taxable in the Kingdom of Saudi Arabia. The Taxpayer shall also attach a summary of the invoices issued to the ... company Regarding the supply of equipment in addition to a sample of supporting documents, therefore, the revenues from the supply of equipment must not be subject to tax in accordance

with the income tax law because they are not considered to be from a source in the Kingdom of Saudi Arabia.

While it was stated in the Appellee's response (the Authority) to clarify that the company had previously been requested to submit a letter from the ... company Explaining the amount, date, year and nature of these purchases, which were purchased from the ... company For each year separately, with a copy of the supply contract between the two parties, where the Plaintiff stated that the ... company It will submit the required analytical statement of revenues if there is an official request sent by the General Authority of Zakat and Tax directly to the ... company (By letter or email).

In view of the Plaintiff's lack of cooperation in providing the data requested by the Authority and based on paragraph (3) of Article (57) of the Executive Regulations of the Income Tax Law, the Authority shall adhere to the validity and integrity of its procedures and the outcome of the decision of the adjudication committee.

The clause (imposition of income tax on unspecified revenues for the years 2014 AD, 2015 AD and 2017 AD), as the appellant (the Taxpayer) demands to cancel the decision of the Circuit on this clause on the basis that the Authority increased revenues for the years 2014 AD, 2015 AD and 2017 AD, which resulted in an additional tax in addition to the delay fine, as the Authority issued this assessment based on the approval of the total revenues submitted by the ... company In this regard, the Taxpayer states that the authentication of the previously submitted revenues was not accurate and included false details for the years in dispute. The authentication of the correct detailed revenues issued by the ... company The Taxpayer also attached a comparison between the total revenues according to the old authentication and the new authentication in its regulations, and the Taxpayer claims to cancel the tax assessment on the contested differences.

Whereas it was stated in the Appellee's response (the Authority) that these amounts were taken from the letter of the ... company Supplier to the Authority No. (.../.../1440) dated 05/03/1440 AH, and in view of the Plaintiff's failure to submit the documents supporting its opinion, and based on paragraph (3) of Article (57). The authority shall adhere to the validity and regularity of its procedure, and to the provisions of the adjudication committee.

The clause (withholding tax on discretionary dividends), as the appellant (the Taxpayer) demands the cancellation of the decision of the Circuit on this clause on the basis that the additional withholding tax obligation arising from the discretionary dividends is due to the Authority issuing its tax assessment on the total contract revenues, including the value of the supply of equipment (tax-free). In addition, the adjudication committee supported the Authority's action because the permanent establishment did not provide the approval of the detailed revenues from the ... company , which confirms the amounts of services and supply of equipment for the above years with reference to the above and based on the fact that the permanent establishment has already provided the detailed authentication from the ... company with this



appeal sheet. Accordingly, we request the esteemed committee to cancel the assessment issued by the Authority on this clause and direct the Authority to issue a modified assessment in light of the above facts.

While it was stated in the Appellee's response (the Authority) that this clause is related to the above clause and the Authority's action is correct, and since the clause related to the imposition of income tax for the years 2011 AD and 2012 AD regarding the services that are subject to withholding tax will be amended in the years 2011 AD and 2012 AD, the Authority requests Your Excellency to reject the appeal.

The clause (delay fine), as the appellant (Taxpayer) demands the cancellation of the decision of the Circuit on this clause on the basis of disagreement with the imposition of the delay fine on the income tax and withholding tax obligations, on the clauses in dispute, and the Taxpayer is based on paragraph (a) of Article (77) of the Income Tax Law and Article (68) of the Executive Regulations of the Income Tax Law, Appeal Resolution No. 1333 of 1434AH and Resolution No. 1355 of 1435AH, and adds that the regulations provide for the imposition of the delay fine under paragraph (a) of Article (77) of the Income Tax Law and Article (68) of the Executive Regulations of the Law in the event of delay in the payment of the tax when it becomes final, whether after the Taxpayer accepts the assessment or the end of the objection procedures. Accordingly, the delay fine shall be imposed from the date on which the obligation becomes final under the regulations. Furthermore, paragraph (a) of Article (77) of the Income Tax Law and Article (68) of the Executive Regulations of the Law did not intend to punish the Taxpayer for the delay in determining the amount of tax due as a result of the delay by the Authority, the primary or appellate objection committees or the Board of Grievances. Based on the above, the Taxpayer believes that the delay fine is not imposed under paragraph (2) of Article (77) of the Executive Regulations of the Law.

While it was stated in the Appellee's response (the Authority) that it imposed a delay fine on the unpaid tax differences on the regular date based on paragraph (a) of Article (77) of the Income Tax Law, as well as based on paragraph (1/b) of Article (68) of the Executive Regulations of the Income Tax Law. The Authority's action was also supported by Appeal Decision No. (1774) of 1438AH and Appeal Decision No. (1913) of 1439AH, as well as Appeal Decision No. (1925) of 1439AH. It also supported the Authority's action with the final judgment issued in Case No. (5245/1/s) of 1438AH issued by the Nineteenth Administrative Circuit of the Administrative Court in Riyadh and supported by the Second Administrative Circuit of the Administrative Court of Appeal in Riyadh with judgment No. (3404/s) of 1439AH. The First Appeal Circuit's judiciary for the adjudication of Income Tax Violations and Disputes was established by the Authority in accordance with Appeal Decision No. (IR-2020-28) in Case No. (ZIW-2018-1657). As for what the Plaintiff referred to in an Appeal Decision, it is an Appeal Decision. Therefore, we request Your Excellency to reject the Plaintiff's appeal.

on Wednesday, 13/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members, whose names are recorded in the minutes, through video communication in accordance with the procedures for remote video litigation; based on the provisions of

clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No.: (25711) and dated: 08 /04 /1445AH; after reviewing the appeal request, the pleadings submitted, and the papers and documents contained in the case file, and at this session, the circuit reviewed the request for postponement attached to the case file by the Authority. accordingly, the Circuit decided to accept the request and grant the Authority a period of five working days ending on Monday, 20/05/2024 AD, and to grant the Taxpayer a subsequent period of five working days ending on Monday, 27/05/2024 AD, after which the written pleadings will be closed and the case will be submitted for deliberation and decision based on the documents contained in the case file, and the Circuit will not accept any new documents or memoranda submitted after the aforementioned date.

on Wednesday, 01/06/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members, whose names are recorded in the minutes, through video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No.: (25711) and dated: 08/04/1445 AH; after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and as for the Taxpayer's appeal regarding the clause (imposing income tax on the total revenues related to the supply of equipment for the years ended 31 December 2011 AD to 2017 AD), and based on Article (5) Paragraph (7) of the Executive Regulations of the Income Tax Law, which states: "Contracts for the supply of goods to the Kingdom, including contracts for their shipment and insurance, do not arise from an activity that took place in the Kingdom, unless the contracts include accompanying works such as internal transport, installation, maintenance, training, etc., which are practiced within the Kingdom. In this case, the accompanying works only arise from an activity in the Kingdom." Based on the above, and since the focus of the dispute lies on the imposition of income tax on the total revenues related to the supply of equipment because the Taxpayer was unable to obtain a letter from the ... company It shows the amounts of services and the supply of equipment for the years in dispute, while the Taxpayer stated that these amounts are not subject to tax because the source of income in the Kingdom is not realized, and by

reviewing the documents attached to the case file, it is clear that the Taxpayer attaches a letter from the ... company Explaining the amount, date, year and nature of these purchases, which were purchased from the ... company (The Taxpayer) for each year separately, and the Taxpayer also attached a summary of the invoices issued to the ... company With regard to the supply of such equipment from abroad, and since the Taxpayer has submitted documents supporting the validity of its defenses, it is decided to accept the Taxpayer's appeal and cancel the circuit's decision in this clause.

Whereas, regarding the Taxpayer's appeal regarding the clause (imposing income tax on unspecified revenues for the years 2014 AD, 2015 AD and 2017 AD), and based on Article (5), paragraph (7) of the Executive Regulations of the Income Tax Law, which states: "Contracts for the supply of goods to the Kingdom, including contracts for their shipment and insurance, do not arise from an activity that took place in the Kingdom, unless the contracts include accompanying works such as internal transport, installation, maintenance, training, etc., which are practiced inside the Kingdom. In this case, the accompanying works only arise from an activity in the Kingdom." Based on the above, and since the focus of the dispute lies on the Authority's action to add unspecified revenues, as these amounts were taken from the letter of the ... company The supplier to the Authority No. (.../.../1440) dated 05/03/1440 AH, due to the failure of the Taxpayer to submit the documents supporting its opinion, and by reviewing the response note submitted before the adjudication committee, it becomes clear that the Taxpayer indicated in its memorandum that the unspecified revenues added by the Authority are related to the supply of equipment. The Taxpayer also attached the documents related to those amounts represented in the purchase orders No. (...) and the number (...) Whereas the supply of equipment is not subject to tax in the Kingdom in accordance with Article (5) Paragraph (7) of the Executive Regulations of the Income Tax Law, and whereas the Taxpayer attached a letter from the ... company It shows the amounts of services and the supply of equipment for the years 2014 AD, 2015 AD and 2017 AD. Therefore, we see the invalidity of the Authority's procedure for imposing income tax on unspecified revenues for the years in dispute. The matter with which it is decided to accept the Taxpayer's appeal and cancel the circuit's decision in this clause.

Whereas, regarding the Taxpayer's appeal regarding the clause (withholding tax on discretionary dividends), and based on Article (63), paragraph (1) of the Executive Regulations of the Income Tax Law, which stipulates: "A non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates: Dividends distributed by 5% ", based on the foregoing, and since the above clause is related to the acceptance of clause (i) and (ii) and since the Circuit decided to accept the Taxpayer's appeal not to impose income tax on the total revenues related to the supply of equipment, which must be with the Circuit to accept the Taxpayer's appeal and cancel the decision of the Adjudication Circuit regarding the clause" Withholding Tax on Discretionary Dividends ".

Whereas, regarding the Taxpayer's appeal regarding the clause (delay fine), and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the fines mentioned in Article Seventy-Six of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay, and this includes the delay in paying the tax required to be withheld and the accelerated payments, calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the executive regulations of the income tax law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which states the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment", and based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law, which stipulates that "Unpaid tax means the difference between what the Taxpayer paid on the regular date and the tax payable under the provisions of the Law, and includes the amendments made by the Authority that have become final as stated in paragraph (2) of Article Seventy-one of these Regulations, including the objected cases where the fine is calculated from the date of the regular date of submission of the declaration and payment," based on the foregoing, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, which requires the Circuit to accept the Taxpayer's appeal and cancel the decision of the Adjudication Circuit regarding the "delay fine" clause, by dropping the delay fine on the clauses in which the Taxpayer's appeal was accepted for the forfeiture of the original imposition of the tax.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Acceptance of the appeal procedurally, submitted by / ... Company Non-resident of commercial register (...), unique number (...) Against the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6720) issued in Case No.(IW-2021-87544) related to the tax assessment for the years 2011 AD to 2017 AD.

2- On the merits:

- A- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause "Imposition of income tax on the total revenues related to the supply of equipment for the years ended 31 December 2011 AD to 2017 AD".
- B- Acceptance of the Taxpayer's appeal and revocation of the decision of the Adjudication Circuit regarding the clause "Imposition of income tax on unspecified revenues for the years 2014 AD, 2015 AD and 2017 AD".



- C- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause "withholding tax on discretionary dividends".
- D- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the (delay fine) clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-170641

Case No. I-2023-170641

Keywords

Income Tax - Taxable Income - Recharged Expenses - Acceptance of the Authority's Appeal

Summary:

the Zakat, Tax and Customs Authority's appeal against the decision of the First Circuit for adjudicating income tax violations and disputes in Riyadh (IFR-2022-2273) for 2015, where its appeal lies on the clause (Recharged Expenses) that it added the clause to the net profit represented by an estimated profit of (40%) of recharged expenses on unaffiliated entities charged to general and administrative expenses (labor rental for external and internal associated entities) since these associated entities are outside the Kingdom and included in other revenues by the same amount. Whereas, the Appellate Committee's review of the Authority's appeal memorandum shows that it bases its action on Article 63(c) of the Tax Law, which gives the Authority the right to reallocate revenue in transactions between related parties to reflect the revenue that would be realized in a transaction with independent parties, and whereas the expenses recharged to cost represent the rental of labor to external and internal related parties, from which no profits were realized, and therefore are not in accordance with the prices made between independent parties the expenses recharged to cost represent the leasing of labor to external and internal related parties, from which no profits have been realized, and therefore are not in accordance with the prices made between independent parties, and therefore, the Authority is entitled to calculate the revenue that will be realized from the leasing of labor in accordance with paragraph (c) of Article (63) of the Tax Law mentioned above. Consequently; accepting the authority's appeal and canceling the decision of the ruling circuit on this clause.

Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (c) of Article (36) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (a) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)

- Paragraph (1) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425H](#)

### Facts:



the appeal filed on 18/01/2023 AD from/... National ID number (...) as an agent for the appellant company under Agency No. (...), and the appeal filed on 22/01/2023 AD from the Zakat, Tax and Customs Authority (ZTA), against the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Jeddah Governorate No. (IFR-2022-2273) issued in Case No. (I-2021-74097) related to the 2015 AD tax assessment, in the case filed by the Taxpayer against the ZTA, in which the decision of the Adjudicating Circuit ruled as follows:

First: the decision of the Defendant, the Zakat, Tax and Customs Authority, against the Plaintiff, ... (unique number...) Related to the clause of profits of expenses recharged to the affiliates of the subject matter of the lawsuit.

Second: proof of termination of Plaintiff's... (unique number...) With the Defendant/Zakat, Tax and Customs Authority, related to the clause of subcontractors and support services of the subject matter of the lawsuit, by the Defendant's acceptance of the Plaintiff's requests.

Third: modification of the Defendant/Zakat, Tax and Customs Authority's action against the Plaintiff/company. (unique number...) relating to the clause of late payment penalties at issue, as set out in the Grounds.

iV: rejecting the other objections of the Plaintiff/... company (unique number...) on the decisions of the Defendant/Zakat, Tax and Customs Authority regarding the assessment at issue.

since this decision was not accepted by the parties, each of them filed a list of appeals, which included the following:

With regard to the Taxpayer's appeal of the Adjudication Circuit's decision, it submitted an appeal statement that was reviewed by the circuit and included what happened that the Taxpayer is demanding to accept its appeal and overturn the Adjudication Circuit's decision regarding the clause (import profits), the clause (social insurance), the clause (subcontractors and support services that are not supported by documents), the clause (unrealized currency exchange gains) and the clause (delay fine).

With regard to the Authority's appeal against the decision of the Adjudication Circuit, its appeal can be made with regard to the clause (reloaded expenses profits) that it added the clause of (5,247,964) riyals to the net profit, which is represented in estimated profits of (40%) of the reloaded expenses to non-affiliated parties charged with general and administrative expenses (leasing labor to external and internal parties) because these assessment ed parties are outside the Kingdom and were included in other revenues in the same amount (excluding the impact). After studying and reviewing, the Authority confirms the validity of its

procedure, as the service provided to non-resident related parties in the Kingdom at cost without making any profits and not according to the prices used between independent parties based on Article (63/ c) of the Income Tax Law. The Authority recalculated these operations and calculated profits on them at a rate of (40%), and therefore the Taxpayer's objection was rejected, adding that the circuit issued the decision subject of appeal cancelled With regard to the clause (delay fine), the Authority clarifies that the decision of the Circuit is consistent with the principle of the Authority in calculating the fine on the clauses rejected by the Plaintiff and the conclusion of the Circuit that the delay fine is originally assessment ed and lapses with the fall of its origin, and since the decision to amend the fine is assessment ed to the clause subject to appeal, the Authority confirms the validity of its procedure, and therefore the Authority adheres to the validity and safety of its procedure and requests the reversal of the decision of the Appealed Clauses Adjudication Circuit for the above grounds.

On Monday, February 12, 2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via video conferencing in accordance with the procedures of remote video litigation; based on the provisions of clause no:(2) of Article Fifteen of the Rules of Work of the Committees for Adjudicating Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441 AH; after reviewing the appeal submitted by the parties to the case, and after examining the contents of the case file, the circuit decided that the case has become ready for adjudication and issuing the decision on its subject matter, so the circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and as for the Authority's appeal regarding the clause (reloaded expenses profits), and where its appeal is that it added the clause of (5,247,964) riyals to the net profit, which is represented in estimated profits of (40%) of the reloaded expenses to non-affiliated parties charged to general and administrative expenses (leasing labor to external and internal assessment ed parties) because these related parties are outside the Kingdom and have been included in other revenues for the same amount. paragraph (c) of Article 63 of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/1/1435 AH stipulates: "Anti-avoidance measures: c. The Authority may reallocate income and expenses in transactions between related parties or parties belonging to the same entity to reflect the income that would have been realized if the parties were independent and unrelated." based on the foregoing, and whereas the contested decision



concluded to cancel the Authority's action on the grounds that paragraph (b) of Article 63 of the Tax Law does not apply to the Taxpayer's case and that the Authority did not prove the existence of any material evidence or presumption that the Plaintiff tried to avoid or minimize the tax, but upon reviewing the Authority's appeal memorandum, it is clear that it bases its action on paragraph (c) of Article 63 of the Tax Law, which gives the Authority the right to redistribute income in transactions between related parties to reflect the income that would be realized in a transaction with independent parties since the expenses recharged to cost represent the leasing of labor to external and internal related parties, from which no profits were realized, and therefore are not in accordance with the prices that take place between independent parties, the Authority is entitled to calculate the revenue that will be realized from the leasing of labor in accordance with paragraph (c) of Article (63) of the Tax Law mentioned above, which leads the Circuit to accept the Authority's appeal and cancel the decision of the Adjudication Circuit on this clause.

Whereas, with regard to the Authority's appeal on the clause (delay fine), and where its appeal lies that the decision of the Circuit is consistent with the principle of the Authority in calculating the fine on the clauses rejected by the Plaintiff and the conclusion of the Circuit that the delay fine is originally assessment ed and lapses with the fall of its original, and since the decision to amend the fine is assessment ed to the clause under appeal, the Authority confirms the validity of its procedure. paragraph (a) of Article 77 of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH stipulates the following: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in the payment of the tax to be withheld and accelerated payments, calculated from the date the tax is due to the date of payment." Paragraph (1) of Article 68 of the executive regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." Based on the foregoing, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, which leads the Circuit to partially accept the Authority's appeal and amend the decision of the Adjudication Circuit in this clause by imposing the delay fine on the clauses in which the Taxpayer's appeal was rejected and the Authority's appeal is accepted.

regarding the Taxpayer's appeal on the remaining clauses in the case. Whereas there is no fault in the Circuit's adoption of the grounds for the contested decision without adding to them, since it deemed that those grounds were sufficient and did not require the addition of any new information, because in upholding it on the grounds set out in those grounds, it confirmed that it did not find in the objections raised against the decision anything that warranted a response beyond what was contained in those grounds. That



being the case, and since it has been established that the decision under appeal in the dispute concerning the contested clauses is consistent with the valid grounds on which it is based and sufficient to support its ruling, as the Circuit that issued it examined the substance of the dispute and reached the conclusion set out in its ruling. This court did not find anything that would warrant correction or comment in light of the arguments presented before it. This court therefore rejects the appeal and upholds the decision of the Circuit of first instance in its entirety with regard to the remaining clauses of the claim, based on the grounds given.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

1- Accepting the appeal procedurally from the Taxpayer / ... company , commercial registration (...), unique number (...) The appeal submitted by the Zakat, Tax and Customs Authority against the decision of the first circuit regarding violations and disputes of income tax in the city of Dammam with number (IFR-2022-2273) issued in case number (I-2021-74097) related to the tax assessment for the year 2015 AD.

2- On the merits:

- A- Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit with regard to the clause (Recharged Dividends).
- B- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (import profits).
- C- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the (social insurance) clause.
- D- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (subcontractors and support services that are not documented).
- E- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (unrealized currency exchange gains).
- F- Accepting the Authority's appeal in part, amending the decision of the Adjudication Circuit, and rejecting the Taxpayer's appeal with regard to the delay fine clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-193982

Case No. IW-2023-193982

### Keywords

Income Tax - Taxable Income - Estimated Profit Margin on Revenue - Acceptance of the Authority's Appeal

### Summary:

the Zakat, Tax and Customs Authority's objection to the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (IFR-2023-93544) regarding the tax assessment for 2016 AD and 2017 AD and the withholding tax for 2017 AD and 2018 AD. kDIPA's appeal lies in the two clauses (30% estimated profit margin on revenues for the years 2017 AD and 2018 AD), (and the withholding tax for the months of January for the years 2017 AD and 2018 AD), requesting the cancellation of the Circuit's decision related to these two clauses, with an explicit stipulation to reassign the Taxpayer in accordance with the approved financial statements. the Appellate Committee found that the Trial Circuit's decision to annul the Authority's action did not address the Authority's entitlement to reconnect based on the audited financial statements. article 63 of the Income Tax Law enables the authority to make an estimated assessment in the absence of accurate calculations. the withholding tax for the months of January 2017 AD and 2018 AD is not subject to the statute of limitations. the 2017 AD and 2018 AD tax bindings were issued within the statutory period, and the Taxpayer does not have the right to object to the statute of limitations before a new binding is issued. this means accepting the Authority's appeal and amending the Trial Circuit's decision to stipulate that the Authority is entitled to a tax rebate based on the approved financial statements.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (A) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH](#)
- Paragraph (b,c) of Article (68) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (3) of Article (16) of [The executive regulation for the collection of Zakat issued by the decision of His Excellency the Minister of Finance No. \(2082\) dated 01/06/1438 AH.](#)

## Facts:



The appeal submitted on 30/04/2023 AD by the Zakat, Tax and Customs Authority against the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2023-93544) issued in Case No. (IW-2022-93544) related to the tax assessment for 2016 AD and 2017 AD, and the withholding tax for 2017 AD and 2018 AD, was considered in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit stipulated the following:

First: proving that the Plaintiff's dispute is over..... Ltd is a unique number (...) With the Defendant/Zakat, Tax and Customs Authority related to the clause of disclosure of the exempted income resulting from the review of the financial statements for the years 2014 AD to 2017 AD, the subject of the lawsuit, by the Defendant's acceptance of the Plaintiff's requests in this regard.

Secondly: canceling the other decisions of the Defendant/Zakat, Tax and Customs Authority against the Plaintiff. .... Ltd (unique number...) related to the assessment in question.

as this decision was not accepted by the appellant (Zakat, Tax and Customs Authority), it filed a list of appeals, which included the following:

Regarding the Authority's appeal against the Adjudication Circuit's decision, its appeal concerns (the estimated profit margin clause of 30% on revenues for the years ending June 30, 2017 AD and June 30, 2018 AD - the withholding tax clause for January of the years 2017 AD/2018 AD). Whereas the appellant (the Authority) demands the cancellation of the Circuit's decision regarding this clause on the basis that what was stated in the grounds of the First Circuit in Riyadh was flawed in its operative part, as the Circuit canceled the Authority's procedure in its grounds but did not address re-assessment of the Taxpayer based on the audited financial statements, despite the fact that the dismissal of the Authority's decision was based on the financial statements, and so that the Authority's right to re-assessment is not forfeited, therefore the Authority requests from your esteemed Circuit to cancel the Circuit's decision issued regarding this clause and explicitly state the accountability of the Taxpayer and re-assessment according to the approved financial statements in accordance with what the decision concluded. Regarding the (delay fine) clause, whereas the appellant (the Authority) demands the cancellation of the Circuit's decision regarding this clause on the basis that the Authority confirms the correctness and legality of what was stated in its viewpoint in its detailed response submitted to the Adjudication Circuit in Riyadh to avoid repetition and prolongation, and the Authority clarifies that the delay fine was imposed on tax differences not paid within the statutory deadline based on Article No. (77) paragraph (a) of the Income Tax Law, as well as based on Article (68) paragraph (1/b) of the Executive Regulations of the Income Tax Law, which is calculated after the statutory date for filing the declaration and not from the date of assessment. The Authority's procedure was upheld by Appeal Decision No. (1774) of 1438 AH, and the Authority's procedure was also upheld by the final judgment issued in Case No. (5245/1/q) of 1438 AH issued by the Nineteenth Administrative

Circuit at the Administrative Court in Riyadh and upheld by the Second Administrative Circuit at the Administrative Appeals Court in Riyadh by judgment (3404/q) of 1439 AH. Therefore, the Authority maintains the correctness of its procedure, and accordingly the Authority maintains the correctness and soundness of its procedure and requests the overturning of the Adjudication Circuit's decision in the clauses under appeal for the aforementioned grounds.

On Sunday, 04/08/2024AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members, whose names are recorded in the minutes, through video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No. (25711) dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request is accepted procedurally, as it was submitted by a person with standing, and within the statutory period prescribed for its conduct.

On the merits, and where the Authority's appeal regarding the clause (an estimated profit margin of 30% on revenues for the years 30 June 2017 AD and 30 June 2018 AD) and the clause (withholding tax for the month of January 2017 AD/2018 AD), and where the Authority argues that what was stated in the rationale of the First Circuit in Riyadh, was defective in the operative, as the Circuit in its rationale canceled the Authority's action and did not address the reconnection to the Taxpayer based on the audited financial statements. The Circuit shall reflect on the subject of the dispute, and based on paragraph (b) of Article (63) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH related to measures to combat tax avoidance, which stipulates the following: "The Authority has the right to assess the tax on the Taxpayer in a discretionary manner according to the facts and circumstances related to the Taxpayer if it does not submit its declaration on the regular date, or does not maintain accurate accounts, books and records, or does not adhere to the required form, form and method in its books and records," and based on paragraph No. (3/b) of Article (16) of the Executive Regulations of the Income Tax Law, which stipulates the following: "In order to enforce Taxpayers' compliance with statutory requirements and curtail tax evasion, the Circuit may use tax assessment based on the Taxpayer's relevant facts and circumstances, in the following cases: (b) The Taxpayer's failure to keep accurate books and records that truly reflect its

transactions in the Kingdom" Based on paragraph (c/1) of Article (68) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/1/1425 AH, which stipulates that "(a) Every resident, whether or not assigned under this Law, and the permanent establishment in the Kingdom of a non-resident, who pays an amount to a non-resident from a source in the Kingdom shall deduct a tax from the amount paid in accordance with the following prices: ... (c) The person responsible for withholding tax under this Article is personally liable to pay the unpaid tax and any delay fines resulting therefrom in accordance with paragraph (a) of Article Seventy Seven, if any of the following cases applies to him: (1) If it fails to withhold tax as required. Based on paragraph (d) of Article (68) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH, which stipulates that: "(d) In addition to what is stated in paragraph (b) of this article, if the tax is not deducted in accordance with the provisions of this article, the beneficiary remains indebted to the authority for the value of the tax, and it is entitled to collect it from him or from its agent or guarantor."

"Based on the foregoing, and after reviewing the case file regarding income tax, whereas the Authority's appeal seeks to amend the operative part of the adjudication decision which ruled (to cancel the Authority's estimated assessment procedure without addressing the Authority's right to re-assess the Taxpayer based on audited financial statements), and accordingly the Authority demands explicit provision for holding the Taxpayer accountable and re-assessment according to approved financial statements. However, the Taxpayer demands that no re-assessment be made regarding income and withholding taxes due to statute of limitations, and argues that the Authority has no right to reissue any assessments after the statutory periods guaranteed by the law. Upon reviewing the reasoning of the decision under appeal, it appears that it indicated the invalidity of the estimated assessment and the assessment of the Taxpayer based on his approved financial statements, but the operative part of the decision came to cancel the Authority's procedure entirely without addressing its right to re-assess based on those statements. Therefore, the adjudication decision erred in its conclusion in this regard. Consequently, the Circuit accepts the Authority's appeal and amends the adjudication circuit's decision on this clause. Regarding the Taxpayer's demand not to reissue any assessments after the statutory periods, and whereas there is no statute of limitations on (withholding taxes for January 2017 AD and January 2018 AD) as established by the Circuit, the Authority has the right to return and assess at any time without being bound by a specific period. Regarding (income tax for 2017 AD and 2018 AD), the assessments under appeal were issued within the statutory period, and the Taxpayer has the right to object to the statutory periods (statute of limitations) after the Authority issues the new assessment based on the financial statements. Therefore, there is no merit to the Taxpayer's objection to the statute of limitations on assessments that have not yet been issued. Consequently, the Circuit accepts the Authority's appeal and amends the adjudication circuit's decision on this clause.

regarding the Authority's appeal on the remaining clauses in the case. whereas, there is no fault on the part of the Circuit in adopting the grounds for the decision under appeal without adding to them, if it assesses that these grounds make it unnecessary to introduce anything new, because in upholding them with the content of those grounds, it is certain that the Circuit did not find any objections to the decision that merit a

response beyond what is contained in those grounds, and since it is proven that the decision under appeal regarding the dispute regarding the clauses under appeal was consistent with the valid grounds on which it was based and sufficient to carry its judgment, since the issuing Circuit scrutinized the content of the dispute in it and reached the result in its operative part since the issuing Circuit scrutinized the dispute and reached the conclusion it reached in its operative part, and since this Circuit did not observe anything that warrants censure or comment on it in light of the defenses raised before it, this Circuit concludes to reject the Taxpayer's appeal, reject the Authority's appeal, and uphold the decision of the Adjudication Circuit with respect to the rest of the clauses at issue in the case, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

- 1- Accepting the appeal procedurally from the applicant/Zakat, Tax and Customs Authority, against the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (IFR-2023-93544) issued in Case No. (IW-2022-93544) regarding the tax assessment for the years 2016 AD and 2017 AD, and the withholding tax for the years 2017 AD and 2018 AD.
- 2- On the merits:
  - a- Accepting the Authority's appeal and amending the decision of the Adjudication Circuit regarding the clause (withholding tax for the month of January for 2017 AD/2018 AD).
  - b- Accepting the Authority's appeal and amending the decision of the Adjudication Circuit regarding the clause (30% estimated profit margin on revenues for the years ending June 30, 2017 AD and June 30, 2018 AD).
  - c- Rejecting the Authority's appeal and upholding the decision of the Adjudication Circuit with regard to the delay fine clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-179136

Case No. IR-2024-179136

### Keywords

income Tax - Taxable Income - Raising the Profit Margin Rate on Expenses Recharged to the Head Office -  
Acceptance of the Authority's Appeal

### Summary:

the Zakat, Tax and Customs Authority's objection to the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (ISR -2022-1970), issued in Case No. (I-2021-74489) regarding the tax assessment for the years 2016 AD to 2018 AD. the Authority's appeal lies on the provision (raising the profit margin percentage on expenses recharged to the headquarters) to 40% for the years 2016 through 2018 AD. the Authority confirmed that the Taxpayer did not provide supporting documents for the costs or contracts related to the scope of services. the CRA also explained that the Taxpayer did not clarify the mechanism for determining the profit percentage it used, and provided justifications based on the 2015 AD financial documents, which show a profit margin of 34.1% on contracts with unrelated parties, which led the CRA to estimate the percentage at 40%. the fine decision was also appealed based on the authority's imposition of a late penalty for unpaid tax differences. the Appellate Committee partially accepted the Authority's appeal regarding the amendment of the profit margin percentage to 40% and the amendment of the decision of the Adjudication Circuit on this clause, while the Authority's appeal regarding the delay fine was rejected, as the circuit confirmed the validity of applying the penalty in accordance with Article (77) of the Income Tax Law. Consequently: accepting the Authority's appeal in part and amending the initial decision regarding the profit margin clause, and rejecting the Authority's appeal regarding the delay fine.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (62) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Article (63) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)





- Paragraph (b) of Article (63) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (a) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (3,4) of Article (16) of [The Executive Regulations of the Income Tax Law issued by the Minister of Finance's Decision No. \(1535\) dated 11/06/1425H](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by the Minister of Finance's Decision No. \(1535\) dated 11/06/1425H](#)
- Paragraph (1) of Article (68) of [The Executive Regulations of the Income Tax Law issued by the Minister of Finance's Decision No. \(1535\) dated 11/06/1425H](#)
- Paragraph (2) of Article (71) of [The Executive Regulations of the Income Tax Law issued by the Minister of Finance's Decision No. \(1535\) dated 11/06/1425H](#)

#### Facts:



the appeal filed on 19/02/2023 AD by the Zakat, Tax and Customs Authority against the decision of the Third Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh, No. (ISR -2022-1970) issued in Case No. (I-2021-74489) regarding the tax assessment for the years 2016 AD to 2018 AD, was considered in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudicating Circuit ruled as follows:

First: Procedurally:

- Acceptance of the lawsuit filed by the Plaintiff / branch of a ... company , Commercial Registration No. (...), against the Defendant/Zakat, Tax and Customs Authority, procedurally.

Secondly: On the merits:

1- Cancellation of the Defendant's action regarding the clause of raising the profit margin percentage on the expenses recharged to the head office for 40% for the years from 2016 AD to 2018 AD.

2- Cancel the Defendant's action in relation to the delay fine clause.

Whereas this decision was not accepted by the appellant (General Authority of Zakat, Tax and Customs), it submitted an appellate brief which the Circuit reviewed, where the Authority's appeal focuses on the clause (increasing the profit margin percentage on expenses recharged to the head office to 40% for the years 2016 AD to 2018 AD). Regarding the (years 2016 AD to 2018 AD), the Authority clarifies that the Taxpayer provided an explanation of how expenses and other income were recorded as accounting entries without providing the original accounting entries that were made in this regard and supported by the general ledger



and related documents. Additionally, a memorandum of understanding was submitted between the head office and the branch (Taxpayer) stating that the head office pays all branch costs plus a percentage of (5%) as "service fees," while the main contract clarifying the nature and scope of work was not provided. As for what was mentioned in the decision's reasoning that the Authority did not provide a calculation basis for applying the profit margin of (40%) and that the Authority's procedure was not supported by documentary evidence, the Authority submitted its calculation method in the supplementary response memorandum. The Authority confirms that the Taxpayer fundamentally did not clarify the mechanism used in determining the profit percentage on costs specified with the head office at (5%). Regarding the Authority's mechanism for determining the profit percentage estimated at (40%), we clarify that the understanding letter concluded between the branch and head office stated that the branch may provide advisory services for other parties besides those provided to the head office, and the same letter mentioned that there would be periodic review of this return - service fees - to maintain neutral compensation. Accordingly, the Authority reviewed the services provided by the branch to neutral parties as shown in the financial statements for 2015 as the closest year that could be used as a basis for comparison with the disputed years, and the following was found: Revenues from contracts with third parties (SR 13,370,968) Costs of contracts with third parties (SR 8,811,581) Profit from contracts with third parties (SR 4,559,387) Profit rate (34.1%) Accordingly, it has accounted for the Taxpayer with an estimated profit rate of (40%) Guided by the profitability ratios of contracts made with unrelated parties. With regard to the clause (delay fine), the Authority clarifies that it imposes a delay fine on unpaid tax differences on the regular date based on Article No. (77), paragraph (a) of the Income Tax Law, and demands the acceptance of its appeal and the reversal of the decision of the Adjudication Circuit.

On Thursday, 16/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, through video communication in accordance with the remote visual litigation procedures, based on what is stated in Clause No. (1) of Article Fifteen

From the Rules of Procedure of the Zakat, Tax and Customs Committees issued by Royal Decree No.: (25711) dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

#### Grounds:

upon reviewing the case documents and the appeal list submitted by the Zakat, Tax and Customs Authority, the circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request

is accepted procedurally, as it was submitted by a person with standing, and within the statutory period prescribed for its conduct.

On the merits, and with regard to the Authority's appeal on the clause (raising the percentage of the profit margin on the expenses recharged to the head office to 40% for the years from 2016 AD to 2018 AD), b- With regard to (the years from 2016 AD to 2018 AD), and where the Authority's appeal lies in the failure of the Taxpayer to provide the contract clarifying the scope of service, its value and the value of the basic contract, and based on Article (62) of the Income Tax Law, which stipulates that: a. The authority has the right to correct and amend the tax shown in the declaration to make it compatible with the provisions of this law, and it has the right to make the tax assessment if the Taxpayer does not submit its declaration." Based on paragraph (A/2) of Article (63) of the Income Tax Law related to tax evasion procedures, which stipulates that: a. For the purpose of determining the tax, the Authority has the right to: 2 Re-adapting transactions whose form does not reflect their essence and putting them in their true form.", and based on paragraph (c) of the same article, which stipulates that: c. The authority may redistribute revenue and expenses in transactions between related parties or parties affiliated with the same entity to reflect the revenue that would have been achieved if the parties were independent and unrelated.", and based on Article (16) Paragraph (3 /b /c) of the Executive Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/6/1425 AH, which stipulates that: "In order to oblige Taxpayers to comply with statutory requirements and to reduce tax evasion cases, the Circuit shall have the right to make a discretionary assessment in accordance with the facts and circumstances associated with the Taxpayer in the following cases: (b) The Taxpayer's failure to keep accurate books and records that truly reflect its transactions in the Kingdom" (c) The inability of the Taxpayer to prove the validity of the declaration information by virtue of supporting documents, taking into account what is stated in paragraph (3) of Article Fifty-Seven of these Regulations.", and based on paragraph No. (3) of Article (57) of the Executive Regulations of Income Tax, which stipulates the following: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on paragraph (4) of Article (16) of the Executive Regulations of the Income Tax Law which states "The estimated net profit shall be determined according to available evidence, facts, or indicators related to the Taxpayer's activity, its nature, and the surrounding circumstances." Based on the foregoing, and whereas the Taxpayer demands the application of a profit rate of (5%) and the Adjudication Circuit's decision was to accept the Taxpayer's objection for submitting the head office and branch agreement and a detailed statement of these expenses and financial statements, and that (the Authority) did not provide a calculation basis for applying the profit margin at a rate of (40%) and its procedure was not supported by supporting documents, while the Authority argued that the Taxpayer did not comply with submitting the contract

clarifying the scope of service, its value, and the value of the basic contract, and for not providing the list of local clients to verify the value paid and collected from external parties due to the misrepresentation in the value of other revenues and the inability to track their cost as these transactions do not reflect their essence, status, and true picture according to Article (63) of the Income Tax Law. Upon the Circuit's review of the attached documents, it became clear that the Taxpayer submitted the memorandum of understanding concluded on September 15, 2011 AD between the head office and the branch (Taxpayer) which included that the head office pays all branch costs in addition to (5%) of it as "service fees," while it did not comply with submitting a sample of invoices issued to clients and a sample of journal entries that clarify their recording in the accounts within the revenue account and their corresponding invoices and journal entries that clarify bearing the value of costs incurred for services provided to clients with a profit margin of (5%) which are sent to the head office. The Authority also clarified in its response memorandum the mechanism for the Authority's determination of the profit rate that was estimated at (40%) and provided the basis for its calculation compared to the year 2015 AD by reviewing the services provided by the branch to neutral parties as shown in the financial statements for the year 2015 AD as the closest year that can be taken as a basis for comparison with the years in dispute, the matter with which the Circuit concludes by partially accepting the Authority's appeal and amending the Adjudication Circuit's decision regarding this clause.

A - Regarding (the year 2015 AD), and whereas there is no fault with the Circuit in adopting the grounds of the decision under appeal without addition when it determines that those grounds are sufficient and obviate the need to introduce anything new, because in affirming them with what those grounds contained, it is confirmed that it did not find in what was directed against the decision in terms of challenges anything that deserves a response beyond what those grounds contained. Since this is the case, and it is established that the decision under appeal regarding the dispute concerning the challenged clauses came in accordance with the valid grounds upon which it was based and which are sufficient to support its ruling, as the Circuit that issued it undertook to examine the core of the dispute therein and concluded regarding it with the result it reached in its operative part. Whereas this Circuit has not observed anything that calls for rectification or comment regarding it in light of the defenses raised before it, this Circuit concludes by rejecting the Authority's appeal and affirming the adjudication circuit's decision under appeal in the result it reached on this clause, supported by its grounds.

With regard to the Authority's appeal on the clause (delay fine), where the Authority's appeal lies in its imposition of a delay fine on unpaid tax differences on the regular date, and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425AH, which Stated the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes delays in paying the tax required for withholding and accelerated payments, calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article

(68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425H, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment", and based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law, which stipulates that "Unpaid tax means the difference between what the Taxpayer paid on the regular date, and the tax payable under the provisions of the Law. It includes the amendments made by the Authority, which have become final as stated in paragraph (2) of Article Seventy-one of these Regulations, including the cases objected to, where the fine is calculated from the date of the regular date of submission of the declaration and payment. Based on the foregoing, and since this clause is subordinate to the first clause (raising the percentage of the profit margin on the recharged expenses of the head office to 40% for the years from 2016 AD to 2018 AD), in which the decision of the Circuit ended up partially accepting the appeal of the Authority and amending the decision of the Adjudication Circuit, with which the Circuit ends up partially accepting the appeal of the Authority and amending the decision of the Adjudication Circuit in relation to this clause.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Accepting the appeal procedurally from the appellant/Zakat, Tax and Customs Authority, against the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh City No. (ISR -2022-1970) issued in Case No. (I-2021-74489) regarding the tax assessment for the years 2016 AD to 2018 AD.

2- On the merits:

a. Accepting the Authority's appeal in part and amending the decision of the Adjudication Circuit regarding the provision (raising the profit margin percentage on expenses recharged to the headquarters to 40% for the years 2016 AD to 2018 AD)

b. Accepting the Authority's appeal in part and amending the decision of the Adjudication Circuit with regard to the delay fine clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-171065

Case No. W -2023-171065

### Keywords

Income Tax - Taxable Income - Cost Basis – Rejection of the Authority's Appeal – Rejection of the Taxpayer's Appeal

### Summary:

The Taxpayer and the Zakat, Tax and Customs Authority objected to the decision of the First Circuit to adjudicate income tax violations in Dammam No. (IZD-2022-2492) regarding the capital gains tax assessment for 2019 AD. Where the Taxpayer's appeal lies on the clause (sale value) demanding the reversal of the decision of the Adjudication Circuit, and where the authority's appeal lies on the clause (cost basis), based on the executive regulations of the income tax law. Whereas, it was proven to the Appeal Committee after reviewing the financial statements for the year 2019 AD, that the Taxpayer submitted an internal calculation of the cost basis of (2,099,068) riyals, while the financial statements showed that the total equity amounted to (2,209,545) riyals. Accordingly, the Committee considered it necessary to amend the decision of the Adjudication Circuit to approve the correct cost basis amount, which is (2,209,545) riyals, as proven in the financial statements. This resulted in the rejection of the Taxpayer's appeal, and the rejection of the Authority's appeal with the modification of the cost basis to (2,209,545) riyals.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (7) of Article (16) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425H](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425H](#)

### Facts:

the appeal filed on 23/01/2023 AD, from/... National ID number (...) In its capacity as the director of the appellant company under the Memorandum of Association, and the appeal submitted on 26/01/2023 AD

by the Zakat, Tax and Customs Authority, on the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2492) issued in Case No. (W-2021-84471) related to assessment ing the capital gains tax for the year 2019 AD, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

Amending the Defendant's decision regarding the capital gains tax clause for 2019 AD.

Whereas this decision was not accepted by the Taxpayer (factory company... ), so it submitted an appeal statement that was reviewed by the Circuit, and it included what happened that the Taxpayer is demanding to accept its appeal and overturn the decision of the Adjudication Circuit. this decision was not acceptable to the appellant (Zakat, Tax and Customs Authority), so it filed a list of appeals, which was reviewed by the Circuit, in which the Authority requested that its appeal be accepted and the decision of the Adjudication Circuit be reversed.

on Monday, 06/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No. (25711) and dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and with regard to the Zakat, Tax and Customs Authority's appeal on the clause (cost basis), and based on paragraph (7/b) of Article (16) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/6/1425 AH, which stipulated the following: "If the sold asset is a share in a capital company, the selling value is determined based on the contractual value, or the market value of this share, or its book value in the company's accounts, whichever is greater, and it is compared with the asset's cost basis to determine the capital gain." Based on paragraph (3) of Article (57) of the Executive Regulations of Income Tax, which stipulates the following: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of

the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the above, and by referring to the case file, the Circuit found that the Taxpayer submitted an internal calculation of the value of the equity on a cost basis of (2,099,068) riyals, and by referring to the financial statements for 2019 AD, the Circuit found that the total equity amounted to (2,209,545) riyals, which leads the Circuit to amend the decision of the Adjudication Circuit by adopting the cost basis amount of (2,209,545) riyals according to the financial statements.

with regard to the Taxpayer's appeal regarding the clause (Selling value), the Circuit has no fault in adopting the grounds for the decision under appeal without adding to them when it determines that these grounds make it unnecessary to introduce anything new, because in supporting the decision with the content of these grounds, it is clear that the Circuit did not find any objections to the decision that merit a response beyond what is contained in these grounds, and since this is the case and it is proven that the decision under appeal regarding the disputed clauses as the issuing Circuit scrutinized the dispute and came to the conclusion it reached in its operative part, and as this Circuit did not notice anything that warrants censure or comment on it in light of the defenses raised before it, this Circuit concludes to reject the Taxpayer's appeal and uphold the decision of the Adjudication Circuit with respect to the result it reached in this clause, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Acceptance of the appeal in the form of the assigned applicant/factory company... Commercial Registration No. (...), unique number (...), and the Zakat, Tax and Customs Authority, against the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2492) issued in Case No. (W-2021-84471) related to the capital gains tax assessment for the year 2019 AD.

2- On the merits:

(a) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (sale value).

(b) Rejecting the appeal of the authority and amending the decision of the Adjudication Circuit regarding the clause (cost basis).





Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-173912

Case No. I-2023-173912

### Keywords

Income Tax - Taxable Income - Unallowable Contract Costs - Taxpayer's Appeal Accepted

### Summary:

the Taxpayer's objection to the decision of the first Circuit for resolving income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2596) regarding the tax assessment for the years 2017 AD and 2018 AD. the Taxpayer's appeal of the 2017 AD contract cost is to exclude a difference in the contract cost for legal expenses related to the company. the appellant also provided a detailed breakdown of the differences related to the legal services provided by its law firm, requesting that they be deducted as administrative expenses for the company and not for the joint venture. under (2018 AD Contract Cost), it assessment ed income tax to the differences in the 2018 AD contract cost (SAR 443,786), claiming that employee-related expenses are not recognized by the JV management, asserting that they are expenses that belong to the company and not the project. the Taxpayer rejects the imposition of a late penalty of 1% of the unpaid tax, arguing that the delay is due to a technical dispute between the Taxpayer and the authority, and that a late penalty should not be imposed in this case. with regard to (the 2017 AD contract cost), the Appellate Committee found that the expenses for which documents were submitted were actual expenses related to the activity. the clause (delay fine) was upheld and the clause (Contract Cost for 2018 AD) was partially accepted, after verifying the grounds provided in the objection, and the decision was amended accordingly. this means accepting the Taxpayer's appeal regarding the 2017 AD contract cost and partially accepting the Taxpayer's appeal regarding the 2018 AD contract cost.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (a,b) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)

- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425H](#)
- Paragraph (1) of Article (67) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425H](#)
- Paragraph (3) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425H](#)
- Paragraph (2) of Article (71) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425H](#)

### Facts:



The submitted appeal was heard on: 31/01/2023 AD, from/ ... Iqama No. In its capacity as the legal representative of the appellant company, the First Circuit's decision to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2596) issued in Case No. (I-2021-83561) related to the tax assessment for 2017 AD-2018 AD, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

First: The Plaintiff's objection to the clause excluding the difference in the cost of the contract was rejected.

Second: The Plaintiff's objection to the delay fine clause was rejected.

The Taxpayer objects to the decision of the disputed adjudication Circuit, it claims that, with regard to the clause (excluding the difference in the cost of the contract), a: assessing the income tax by 20% on the disallowed contract cost for the year 2017 AD to the amount of 597,582 Saudi riyals, as the appellant (the Taxpayer) demands the cancellation of the decision of the Circuit on this clause on the basis that the Taxpayer does not agree with the decision of the adjudication committee, and a detailed statement of the differences in the cost of the contract for the year 2017 AD is attached, explaining that the difference represents the legal services provided to ... from (...) Lawyers, and that the legal expenses are related to the company itself and therefore not incurred by the joint venture, and the Taxpayer claims to deduct them, while it was stated in the response of the appellee (the Authority) that upon assessment ing it found that the only source of revenue for the Plaintiff is the joint venture agreement being a partner in it by (50%), and the Authority's return to the approval of the information related to the joint venture registered with the Authority in the name of the consortium of the ... company Company .. Unique number (...). It was found that the Plaintiff declared its percentage of the revenues in accordance with the revenues declared in the joint venture, but it stated costs greater than its share of the costs of the contract for the joint venture, and since the Plaintiff is supposed to bear (50%) of the costs of the contract according to the joint venture agreement, the Authority refunded the increased cost difference as follows: (Attached), and during the objection, the Plaintiff submitted the following settlement of differences (Attached), b: assessing the income

tax by 20% on the differences in the cost of the contract for the year 2018 AD with an amount of 443,786 Saudi riyals, as the appellant (the Taxpayer) demands to cancel the decision of the circuit on this clause on the basis that the Taxpayer does not agree with the decision of the adjudication committee, and a detailed statement of the difference in the cost of the contract for the year 2018 AD is attached, and it clarifies that the difference of 443,786 riyals is due to expenses related to employees such as internal travel expenses, air tickets, hotel accommodation, insurance, communication expenses, meals, housing expenses and other administrative expenses, and invoices supporting the expenses are attached, and it adds that the management of the joint venture reviews and audits the invoices regarding the cost incurred by the company and then approves the recording of expenses in the accounting records of the joint venture, as the management of the joint venture did not approve these expenses to be recorded in its books, so these actual expenses of the ... company During 2018 AD, the joint venture did not incur it again, but the company has recorded these expenses in its books as part of the cost of the contract, and the Taxpayer is based on Article (12) of the Income Tax Law, and Article (9) Paragraph (1) of the Executive Regulations of the Income Tax Law. Whereas it was stated in the Appellee's response (the Authority) that upon assessment ing, it found that the only source of revenue for the Plaintiff is the joint venture agreement being a partner in it by (50%), and that the Authority referred to the approval of the information related to the joint venture registered with the Authority in the name of the consortium of the ... company Company .. Unique number (...). It was found that the Plaintiff declared its percentage of the revenues in accordance with the revenues declared in the joint venture, but it stated costs greater than its share of the costs of the contract for the joint venture, and since the Plaintiff is supposed to bear (50%) of the costs of the contract according to the joint venture agreement, the Authority refunded the increased cost difference as follows: (Attached), and during the objection, the Plaintiff submitted the following settlement of differences (Attached). And the clause (delay fine), as the appellant (Taxpayer) demands the cancellation of the decision of the Circuit on this clause on the basis that the Taxpayer does not agree to impose delay fines, as the additional tax obligation arose due to a technical dispute between the Taxpayer and the Authority. Article (77), paragraph (a) of the Income Tax Law and Article (68) of the Executive Regulations stipulate the imposition of a delay fine in the event of delay in the payment of the tax, and pursuant to Article 68 (1) of the Tax Regulations and Article 71 (1) and(2) on the status of the objection, since there is no final decision yet issued by the Authority, the Tax Appeal Committee or the Board of Grievances regarding the imposed tax, which is under appeal, no tax should be paid, as the company is then considered late in payment. Therefore, delay fines should not be imposed. Accordingly, the Taxpayer is required to cancel the delay fines. While it was stated in the Appellee's response (the Authority) that the Authority imposed a delay fine on the unpaid tax differences on the regular date based on paragraph (a) of Article (77) of the Income Tax Law, which is also based on paragraph (1/b) of Article (68) of the Executive Regulations of the Income Tax Law. The Authority's action was also supported by Appeal Resolution No. (1774) of 1438AH and Appeal Resolution No. (1913) of 1439AH as

well as Appeal Resolution No. (1925) of 1439AH. Therefore, we ask Your Excellency to reject the Appeal of the Plaintiff.

on Thursday, 09/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes met via videoconference in accordance with the procedures for remote videoconferencing; based on the provisions of Clause 2 of Article 15 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit did not find it necessary for the parties to the appeal to be present, the Circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and as for the Taxpayer's appeal regarding the clause (20% income tax assessment on the contract cost that is not allowed for the year 2017 AD), and based on paragraph No. (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, regarding the expenses that may be deducted to determine the taxable income as follows:

1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. d. Not of a capital nature" based on the above, the centerpiece of the dispute lies in the non-determination of legal consultancy fees, as the Taxpayer indicated that the fees were inadvertently categorized as part of the contract costs. and that the expenses inadvertently classified as contract cost are in fact administrative expenses in nature and it claims to deduct them. A review of the documents attached to the case file shows that the Taxpayer submitted the account statements related to these expenses (general professor) with the submission of invoices related to the clause and in addition to submitting the agreements related to the consultations of the legal accountant in the amount of (721,000 riyals) in Appendix (5), the Taxpayer has submitted the documents supporting its point of view, and the disputed expenses are actual expenses related to the activity according to Article (9) of the Executive Regulations of the Income Tax Law, which means that the Taxpayer's appeal should be accepted and the decision of the Adjudication Circuit regarding the clause (20% income tax on the unauthorized contract cost for the year 2017 AD) should be annulled.

Whereas, regarding the Taxpayer's appeal regarding the clause (delay fine), and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment", and based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law, which stipulates that "Unpaid tax means the difference between what the Taxpayer paid on the regular date and the tax payable under the provisions of the Law. It includes the amendments made by the Authority that have become final as stated in paragraph (2) of Article Seventy One of these Regulations, including the objected cases where the fine is calculated from the date of the regular date of submission of the declaration and payment." Based on the foregoing, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, the Circuit shall amend the decision of the Circuit of Adjudication and therefore support the Circuit's decision to impose the delay fine from the due date on the clauses in which the Taxpayer's appeal was rejected and cancel the delay fine on the clauses in which the Taxpayer's appeal was accepted.

Whereas regarding the Taxpayer's appeal concerning the clause (income tax assessment at 20% on contract cost differences for the year 2018 AD), and whereas there is no fault with the Circuit in adopting the grounds of the decision under appeal without addition when it determines that those grounds are sufficient and obviate the need to introduce anything new, because in affirming them with what those grounds contained, it is confirmed that it did not find in what was directed against the decision in terms of challenges anything that deserves a response beyond what those grounds contained. Since this is the case, and it is established that the decision under appeal regarding the dispute concerning the challenged clauses came in accordance with the valid grounds upon which it was based and which are sufficient to support its ruling, as the Circuit that issued it undertook to examine the core of the dispute therein and concluded regarding it with the result it reached in its operative part. Whereas this Circuit has not observed anything that calls for rectification or comment regarding it in light of the defenses raised before it, this Circuit concludes by rejecting the Taxpayer's appeal and affirming the adjudication circuit's decision under appeal in the result it reached on the clauses subject to the case, supported by its grounds.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:



### Decision:

First: Acceptance of the appeal procedurally, submitted by / ... Company commercial Register (...), unique number (...), on the decision of the First Circuit of Income Tax Violations and Disputes in Jeddah Governorate No. (IZJ-2022-2596) issued in Case No. (I-2021-83561) related to the tax assessment for the years 2017 AD and 2018 AD.

Second: On the merits:

1- Regarding the Taxpayer's appeal on the clause (excluding the difference in contract cost):

a- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (20% income tax on the unauthorized contract cost for 2017 AD).

b- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the 20% income tax on the differences in the contract cost for 2018 AD.

2- Amending the decision of the Adjudication Circuit regarding (delay fine).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. : IR-2024-167660

Case No. I-2023-167660

### Keywords

Income Tax – Taxable Income – Undeclared Revenue – Acceptance of Taxpayer Appeal

### Summary:

The Taxpayer's objection to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2021 -2481), where the Taxpayer's appeal lies on the clause (undeclared revenues for 2018 AD), the Taxpayer clarifies in its appeal that the difference in the net profit, which amounted to (4,659,026) riyals, is due to differences between the sales shown in the value added tax return and the registered tax return. He confirms that it has provided sufficient documents to support its objection, including statements of sales returns, statements from the discount ledger, as well as financial statements audited by a certified public accountant's office. It also shows that sales for 2018 AD decreased compared to 2017 AD, noting that the differences are due to sales returns and deductions that were not mentioned in the tax returns according to the model available at the time. Whereas, it was proven to the Appeal Committee that the Taxpayer submitted documents proving the validity of its position, including return statements, audited financial statements, and return invoices that did not include a tax. This means; accepting the Taxpayer's appeal and canceling the decision of the adjudicating circuit.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (2) of Article (4) of [The executive regulation for collecting zakat issued by the decision of His Excellency the Minister of Finance number \(2082\) dated 01/06/1438 AH.](#)

### Facts:

the appeal filed on 03/01/2023 AD from/... Resident ID number (...) in his capacity as the statutory representative of the appellant company under the Memorandum of Association, on the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (IZD-2021-2481) issued in Case



No. (I-2021-74985) related to the 2018 AD tax assessment, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority:

Rejection of the Plaintiff's objection regarding an undeclared revenue clause for 2018 AD.

Whereas this decision was not accepted by the Taxpayer (factory company...), submitted a list of appeals that included the following:

As the Taxpayer objects to the Adjudication Circuit's decision under challenge, it claims that regarding the clause (undeclared revenues for the year 2018 AD), in response to what the Authority indicated that the Taxpayer did not attach the case statement, the case statement was attached when submitting the appeal request, clarifying therein the objection clauses and the statutory justifications for the objection through the Secretariat's website when submitting the appeal request, and that it appeals the adjudication decision on the basis that the net profit was adjusted by the amount of (4,659,026) riyals, and indicated the existence of a difference between the tax assessment recorded sales of (6,563,430) riyals and the declaration that was recorded based on audited and approved balance sheet data from one of the offices accredited with the Saudi Organization for Chartered and Professional Accountants, and the report was signed on 28/4/2019 AD after examining the company's complete files. Therefore, the basis for the Authority's approval in amending the declaration is the tax declaration. Whereas there is no form or proposal according to the Executive Regulations of the Value Added Tax Law approved at that time for placing returns without tax or clarifying them in the declaration, except that there is a declaration commonly known to everyone, and that the Authority has the right to inquire about the difference and this is what happened, and all supporting documents proving the correctness of the Taxpayer's viewpoint were sent, and also an approved letter was sent from an accredited certified public accountant office which approved the balance sheet report dated 28/04/2019 AD clarifying that the net sales consist of returns from 2016 AD and 2017 AD that were not mentioned in the value added tax declarations according to the available form for preparing the declaration. It added that the net profit results from revenues and expenses, so is it reasonable to adjust the net profit by the amount of (4,659,026) riyals, i.e., approximately an illogical profit rate exceeding 40%, where all expenses for the year are (6,551,546) riyals and the declared and approved revenues in the balance sheet are (6,563,430) riyals. It also added that it returned the goods and included them in the warehouse for resale with value added tax according to the Executive Regulations of Value Added Tax and did not sell them without tax, and if the Authority wanted to investigate, it should request what it wants according to the Minister of Finance's decision, which is to maintain records that support its procedure. Accordingly, the Taxpayer demands the overturning of the Adjudication Circuit's decision under challenge for the aforementioned grounds.

on Monday, 22/01/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes met via video conferencing in accordance with the procedures for remote video litigation; based on the provisions of Clause No. (2) of Article Fifteen of the Rules of Work of the Tax Violations and Disputes Resolution



Committees issued by Royal Decree No. (26040) and dated: 21/04/1441AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit did not find it necessary for the parties to the appeal to be present, the Circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:



Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and as for the Taxpayer's appeal on the clause (revenues not declared for 2018 AD), and where its appeal lies that the net profit has been adjusted by (4,659,026) riyals. Whereas Paragraph(3) of Article (57) of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH stipulates that: "3- In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the foregoing, and upon reviewing the case file and the defenses and documents it contained, it is clear that the dispute between the parties lies in adding the differences between the net profit recorded in the income statement and the sales shown in the VAT sales return, where it was found that the sales differences amounting to (4,659,026) riyals are attributed to (sales returns and discounts provided to customers totaling 4,648,168.65 riyals plus an adjustment resulting from the fourth quarter VAT audit amounting to 10,857,14 riyals). Whereas it was established that the Taxpayer submitted both (statements for sales returns and general ledger statements for discounts to prove the differences totaling 4,648,168.65 riyals) in addition to presenting the 2018 AD financial statements audited and certified by a certified public accounting firm, plus a revenue difference clarification letter regarding VAT revenues and declaration sales and balance sheet stamped by a certified public accounting firm dated 27/05/2021 AD, in addition to copies of return invoices which showed that they did not include tax, plus a sample of daily entries for sales and discounts. In addition to this, and according to what the Authority indicated that if returns were taken into account, this would have the effect of decreasing sales in the income statement, and upon referring to the Taxpayer's financial statements, it was found that sales in 2018 decreased from what they were in 2017 AD. Accordingly, and whereas the Taxpayer provided evidence proving the disputed amounts, the Circuit concludes by accepting the Taxpayer's appeal and canceling the adjudication circuit's decision on this clause.



On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

1- Acceptance of the appeal in the form of the assigned applicant/factory company... , commercial registration (...), unique number (...) Against the decision of the first circuit for adjudicating income tax violations and disputes in Dammam with number (IZD-2021-2481) issued in case number (I-2021-74985) related to the tax assessment for the year 2018 AD.

2- On the merits:

Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (undeclared revenues for the year 2018 AD), according to the grounds and justifications mentioned in this decision.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-178191

Case No. IW-2023-178191

### Keywords

Income Tax - Taxable Income - Revenue in the Company Contract - Accepting the Taxpayer's Appeal - Rejecting the Authority's Appeal

### Summary:

The Taxpayer and the Zakat, Tax and Customs Authority's objection to the decision of the Third Circuit for adjudicating income tax violations and disputes in Riyadh (IFR-2022-6893) regarding the tax assessment for the years 2013 AD and 2014 AD. the Taxpayer's appeal is based on the rejection of the clause (application of estimated profit on revenues and other income) on the grounds that the branch complied with the provisions of the tax law and provided the necessary records and documents, explaining the accounting change in 2013 AD and the adoption of a new system. He objected to the clause (Revenue from the company's contract ...), pointing out that the contract was "on-call services" and the revenue generated was declared according to the percentage of completion method with supporting documents. It requested the elimination of the "delay fine" clause and the calculation from the date of exhaustion of the objection procedure or acceptance of the connection. the Authority's appeal lies on the clause (calculating the withholding tax on dividends based on the estimated assessment ) because the Taxpayer did not provide sufficient documents and the Authority resorted to estimation based on the Income Tax Law. the Appellate Committee accepted the Taxpayer's appeal on the clause (Revenue in the company contract) and overturned the circuit's decision because it proved the correctness of the estimated assessment and the adoption of the available data in accordance with the Income Tax Law.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (a) of Article (76) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (b) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)

- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425H](#)

### Facts:



the appeal filed on 14/02/2023 AD, from/... , National ID No. (...), in its capacity as the legal representative of the appellant company, and the appeal submitted by the Zakat, Tax and Customs Authority, on the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6893) issued in Case No. (IW-2021-81946) related to the tax assessment for the years 2013 AD and 2014 AD, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

First: accepting the objection as a matter of form.

Secondly: On the merits:

- A- Dismiss the consideration regarding the concealment fine clause.
- B- Cancel the Defendant's decision regarding the calculation of the withholding tax on the profits distributed from the discretionary assessment.
- C- Cancellation of the Defendant's decision regarding the rejection of the new documents clause.
- D- Amending the decision of the Defendant regarding the calculation of the delay fine from the date of notifying the Defendant of the discretionary assessment.
- E- Rejecting other requests.

Whereas this decision was not accepted by the Taxpayer (branch of a ... company), it submitted an appeal statement that was reviewed by the Circuit and included the following: With regard to the clause (Applying the estimated profit on revenues and other revenues), the Taxpayer demands the cancellation of the circuit's decision on this clause, and the Taxpayer argues that it is reducing the accounting books and records by computer in the Kingdom, and that the company's statutory accounts are translated into Arabic, and the company has a chartered accountant who reviews its accounting books according to the standards, and the chartered accountant's report did not mention that the branch did not keep the books and records, and during the examination it submitted the trial balance, which showed the balances for the years until September 30, 2013 AD and 2014 AD, and the Taxpayer argues that the branch was using the JD Edwards system and at the end of 2013 ADA the branch introduced a new accounting system provided by ..... All data have been transferred for previous years and therefore the branch is in compliance with the provisions of the tax law. With regard to the clause (revenues of the company's contract...), the Taxpayer requests to cancel the circuit's decision on this clause, as there are no undeclared revenues with the ... company All revenues were disclosed according to the percentage of completion method, and the Taxpayer also pays



that the agreement is an on-call services agreement, i.e. the service will be provided upon request, and the revenues for polymers amounted to (19,881,781) riyals over the years 2013 AD to 2018 AD, and the difference between the total contract amounting to (24,400,000) riyals and the value of the executor of the contract amounting to (19,881,779) riyals, and therefore the difference is due to an on-call services agreement. With regard to the clause (fine for concealing the revenues of the contract) demanding the cancellation of the decision of the Circuit on this clause and paying that the fine should not be imposed because the branch did not hide any revenues from the company's contract... . With regard to the clause (delay fine), the Taxpayer demands the cancellation of the Circuit's decision on this clause, as it demands the calculation of the fine in the event that the dues are final, either by the Taxpayer's acceptance of the assessment or the exhaustion of the objection and appeal procedures.

This decision was also not accepted by the Authority, so it submitted an appeal list, which was reviewed by the Circuit and included the following: With regard to the clause (calculating the withholding tax on the profits distributed from the discretionary assessment), the Authority demands the cancellation of the Circuit's decision on this clause, and states that the withholding tax for the profits distributed after deducting the income tax was calculated from the net profits in application of the provisions of Article (68) of the Income Tax Law, where the Authority used the discretionary method, according to the grounds previously explained in this response memorandum, due to the irregularities that the field inspection team has shown, which leads to the non-availability of what is known as the tracking feature required by the Saudi auditing standards for the possibility of tracking accounting entries and verifying the fact of payment to the head office, because the Plaintiff did not submit books and documents that can be relied upon to verify the fact of payment or track it in subsequent years. Therefore, the entire financial events of the company's branch in the Kingdom are not measured and proven accounting in accordance with accounting principles and standards. With regard to the clause (resubmission of information), the Authority requests the cancellation of the Circuit's decision on this clause, as it states that the submission of data or information that it was unable to provide to the Authority, and due to the fact that the employees responsible for it are on official leave, is an internal matter related to the organization of the Taxpayer, and the Plaintiff submitted its tax return based on data and information that is supposed to be available and ready upon request by the Authority, in accordance with the provisions of the Income Tax Law and its Executive Regulations. In view of the failure to submit these documents and based on the powers granted to the Authority under the provisions of the Law, the Authority relied on the information and data available to it, and that the acceptance of these documents and the cancellation of the Authority's decision to pay the fine, which was clarified, makes the Authority's decision at the time of its issuance invalid.

on Thursday, on: 01/08/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via video communication in accordance with the procedures of remote video litigation; based on the provisions of clause no:(2) of Article Fifteen of the Rules of Work of

the Committees for Adjudicating Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441 AH; after reviewing the appeal submitted by the parties to the case, and after examining the contents of the case file, the circuit decided that the case has become ready for adjudication and issuing the decision on its subject matter, and since the circuit found nothing to require the presence of the parties to the case, the circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, with regard to the Taxpayer's appeal on the clause (revenues of the company's contract...), the Taxpayer claims to cancel the circuit's decision on this clause against the Taxpayer, as there are no undeclared revenues with the company... All revenues were disclosed according to the percentage of completion method, and the Taxpayer also argues that the agreement is an on-call services agreement, that is, when the service will be provided upon request, and the revenues of... (19,881,781) riyals across the years 2013 AD to 2018 AD, and the difference between the total contract amounting to (24,400,000) riyals and the value of the executor of the contract amounting to (19,881,779) riyals, and therefore the difference is due to an on-call services agreement. Based on paragraph (3) of Article (57) of the executive regulations of the income tax law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which states the following: "3. The burden of proving the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration lies with the Taxpayer. In the event that the Taxpayer fails to prove the validity of its declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make a discretionary assessment according to the Authority's view in light of the circumstances and facts related to the case and the information available to the Authority." Based on the above, the Taxpayer disputes the refund of the revenue difference from the contract with Saudi Aramco... Where it indicated that the contract did not end in 2014 AD but was extended until 2016 AD as stated in the contract extension letters attached in the case file, and revenues were declared according to execution. The Taxpayer submitted declarations and financial statements, a sample of invoices, and a contract follow-up statement including various revenues. The Taxpayer also submitted the translated and certified agreement, which shows that the work depends on what is accomplished and delivered. Accordingly, the Taxpayer provided an analytical statement showing what was disclosed by the Taxpayer according to the completion percentage until 2018 AD, and also provided a revenue table from the main activity which shows its disclosure of those amounts in its declarations from 2015 AD to 2018 AD. Accordingly, and whereas it was established through the contracts that invoices are approved within thirty

days from the date of service, the Taxpayer declared the revenues it provided according to the analytical data and agreement and based on the tax declarations. The Circuit concludes by accepting the Authority's appeal and canceling the adjudication circuit's decision regarding the clause (Company contract revenues...).

With regard to the Taxpayer's appeal against the clause (fine for concealment of contract revenues) demanding the cancellation of the circuit's decision on this clause, the Taxpayer pays that the fine should not be imposed because the branch did not hide any revenues from the company's contract... . With regard to the clause (delay fine), the Taxpayer requests to cancel the decision of the Circuit on this clause to object to the Taxpayer, demanding the calculation of the fine in the event that the dues are final, either by the Taxpayer's acceptance of the assessment or the exhaustion of the objection and appeal procedures. Based on paragraph (b) of Article (77) of the Income Tax Law, which stipulates: Delay and Fraud Penalties: B- In addition to the fines mentioned in Article VI Seventy of this law and in paragraph (a) of this article, a fine of twenty-five percent (25%) of the tax difference resulting from the Taxpayer or its legal accountant providing false information or fraud with the intention of evading the tax is imposed on the Taxpayer, in particular in the following cases: 1- Submitting false books, records, accounts or documents that do not reflect the correct position of the Taxpayer. 2- Submitting the declaration on the basis of the absence of books or records with information that contradicts what its books and records show. (3) Filing forged or fictitious invoices or documents, or changing of purchase or sale invoices or other documents with the intention of understating profits or overstating losses. (4) Not declaring one or more of the taxable activities. 5- Destruction or concealment of books, records or documents before the Circuit conducts the examination", and based on the foregoing, where the decision of the Adjudication Circuit ended to disregard the concealment fine because the Taxpayer did not object to it before the Authority, and since the fines associated with the tax differences, are not considered components of the declaration and assessment amendments, as a result of the tax differences, and since their emergence was a result of the existence of those differences between the contract and what the Taxpayer acknowledged, and since the decision of the Circuit in the clause (revenues of the company's contract...) To accept the Taxpayer's appeal, which means that the basis on which the authority built the imposition of the concealment fine related to the contract is invalid, because it is proven that there are no differences, and since the subordinate is a subordinate, which ends with this Circuit accepting the authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause (contract revenue concealment fine).

with regard to the Taxpayer's appeal with regard to the remaining clauses, the Circuit is not to be faulted for adopting the grounds for the decision under appeal without adding to them when it assesses that these grounds make it unnecessary to introduce anything new, because in upholding them with what these grounds contain, it is certain that the Circuit did not find any objections to the decision that merit a response beyond what is contained in those grounds, and since this is the case and it is proven that the decision under

appeal regarding the disputed clauses was in accordance with the valid grounds on which it was based and sufficient to support its decision as the issuing Circuit scrutinized the dispute and reached the conclusion it reached in its operative part, and as this Circuit did not observe any reason to appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject the Taxpayer's appeal and uphold the decision of the Adjudication Circuit with respect to the outcome of the appeal, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

1- Accepting the appeal procedurally of the Taxpayer's ... , commercial registration (...), unique number (...) the appeal filed by the Zakat, Tax and Customs Authority against the decision of the Third Circuit for the adjudication of income tax violations and disputes in Riyadh (IFR-2022-6893) issued in Case No. IW-81946-2021 related to the tax assessment for the years 2013 AD and 2014 AD.

2- On the merits:

- a. Rejecting the Authority's appeal and upholding the decision of the Adjudication Circuit regarding the clause (calculation of withholding tax on dividends based on the estimated assessment ).
- b. Rejecting the Authority's appeal and upholding the decision of the Adjudication Circuit regarding the clause (Investments in a ... company).
- c. Rejecting the parties' appeal and upholding the decision of the Adjudication Circuit regarding the delay fine clause.
- d. Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (applying the estimated profit to revenues and other income).
- e. Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (revenues from the Saudi Company contract).
- f. Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (penalty for concealing contract revenues).





Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024-192732

Case No. I-2023-192732

### Keywords

Income tax-Taxable income-No deduction for profits adjusted for prior losses-Acceptance of Taxpayer's appeal

### Summary:

the Taxpayer's appeal against the decision of the Third Circuit of Income Tax Irregularities and Disputes in Riyadh (IFR-2022-6682), where its appeal is based on the clause (not deducting 25% of adjusted profits to cover previous losses), claiming that the loss carryover deduction is assessment ed to the tax base and not the profit or loss realized in the declaration, and the clause (adjusting net profits with overloaded depreciation differences), claiming that the method of calculating the depreciation amount for the year in dispute does not comply with the tax law or with accounting standards applied in the Kingdom of Saudi Arabia. according to the Taxpayer's declaration, the Taxpayer has the right to deduct the losses carried forward from the taxable profit up to a maximum of (25%) of the annual profit according to the Taxpayer's declaration, and by reviewing the Taxpayer's declaration, it appears that the Taxpayer stated in its declaration submitted to the Authority about the net profit in the amount of the net profit. Therefore, according to the provision of paragraph (1) of Article (11) of the Executive Regulations of the Income Tax Law, the Taxpayer has the right to carry over the adjusted operating losses to tax years following the year of loss by reducing the following years profit until the accumulated operating losses are fully recovered without being limited to a specific period of time. Consequently; accepting the Taxpayer's appeal and canceling the decision of the adjudication authority.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (17) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (a,b) of Article (2) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)

- Paragraph (1) of Article (11) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425H](#)

### Facts:



The submitted appeal was heard on: 25/04/2023 AD, of/..., a national identity (...), in its capacity as the legal representative of the appellant company under the license to defend the private legal personality No. (...), on the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6682) issued in Case No. (I-2021-50132) related to the tax assessment for the year 2012 AD, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

First: Procedurally:

(a) Notwithstanding the objection regarding the bank interest clause and the delay fine clause.

(b) Accepting the objection to the remaining clauses.

Secondly: On the merits:

The Plaintiff/ Company refused... , Commercial Register No. (...) on the decision of the Defendant/Zakat, Tax and Customs Authority.

since this decision was not accepted by the Taxpayer (... company), it filed a list of appeals, which included the following:

The Taxpayer objects to the decision of the Adjudication Circuit in question, it claims that with regard to the clause (adjustment of net profits with depreciation differences overloaded), the Taxpayer explained that it is established that the adjustment of depreciation differences cannot be overloaded by an amount of (6,754,222) million riyals greater than the total depreciation expense charged to the income statement by an amount of (1,401,917) million riyals with a difference of more than four million, because the depreciation differences are the difference between the depreciation charged to the income statement and the depreciation reached by the Authority under the depreciation schedule prepared in accordance with the law and circulars, so it is impossible that the difference is greater than the full amount of depreciation charged to the income statement, and the method by which the amount of depreciation for 2012 AD was calculated at an amount of (6,754.22) million riyals is incompatible with the tax law and accounting standards applied in the Kingdom, as the Authority committed a mistake when it reached that the amount of depreciation for 2012 AD is negative, since this is negative. The clause was rejected because we did not submit the depreciation schedule or the financial statements within the declaration, as stated in the decision "because the Plaintiff did not submit the depreciation schedule within the declaration or the financial statements for the year in question". This is contrary to the fact that we submitted the documents referred to, in addition to the fact that this payment was not paid by the Defendant and was not approved by the

Plaintiff. Rather, the Authority paid by approving the method of calculating this clause on the depreciation schedule and matching it with the lists submitted by us in its response memorandum. "The Authority clarifies that it reviewed the depreciation schedule and matched it with the financial statements, from which the declarations were amended." Moreover, the decision contradicted some of it in the previous line of what was mentioned, "It turns out that the Plaintiff attached a statement of depreciation expenses from the general ledger and it was found that its classification of fixed assets came in accordance with Article (17) of the tax law." The objectionable decision also relied on the correctness of the Authority's calculation without clarification of the method of calculation and identification of supporting documents With regard to the Taxpayer's appeal regarding the clause (not deducting 25% of the adjusted profits to cover previous losses), the Taxpayer stated that based on paragraph (1) of Article (11) of the Executive Regulations of the Income Tax Law, the Circuit recognized our right to deduct the carried forward losses not exceeding (25%) "Based on the above and in accordance with the above provisions, the Plaintiff has the right to deduct the carried forward losses from the taxable profit not exceeding what is deducted (25%) from the annual profit in accordance with the Taxpayer's declaration." Then it followed by rejecting our objection: 'Upon reviewing the Plaintiff's declaration, it appears that it declared a loss in its declarations submitted to the Authority, and therefore, applying the text of paragraph (1) of Article (11) of the Executive Regulations of the Income Tax Law, it is not entitled to demand a reduction of the adjusted profit under the Authority's assessment by carried-forward losses for the disputed years.' Whereas the decision was flawed by an error in reasoning by relying on the fact that the submitted declaration declared a loss, we clarify to the honorable Circuit that the deduction of carried-forward losses is contingent upon the tax base and not upon the profit or loss realized in the declaration. Although the declaration declared a loss, the tax base established amounts due to the Authority, where the tax base is (426,037) riyals and the income tax rate of (20%) of the base value is (85,207) riyals. Because any amendment to the Taxpayer's declaration by the Authority or tax committees is a declaration for the Taxpayer and not for others, and since this clause is among the subsidiary clauses with a fixed percentage (25%) and variable value, it becomes mandatory that any change to the declaration be followed by an adjustment in the deduction of carried-forward losses. Consequently, the committee's decision must be overturned and (25%) must be deducted on any amendment to the declaration. Then the Circuit based its decision on the assumption that all losses from years prior to 2012 AD are disputed losses. We have attached and shown that the tax assessment for 2010 AD is not disputed and was prepared and adjusted by the Authority with a loss of (13,854,591) riyals, and accordingly we are entitled to the deduction. Therefore, the Taxpayer demands the reversal of the adjudication circuit's decision under appeal for the aforementioned grounds.

on Thursday, on: 27/06/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are written in the minutes, through video communication in accordance with the procedures of remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree



No: (25711) and dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:



Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and since it is with regard to the Taxpayer's appeal on the clause (adjustment of net profits with depreciation differences loaded with increase), and where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit towards this clause, as it claims that the method of calculating the amount of depreciation for the year in dispute is not in accordance with the tax law nor with the accounting standards applied in the Kingdom. Based on Article (17) of the Income Tax Law, which stipulates that: (b) Depreciable assets are classified into groups and depreciation rates as follows: 1-Fixed buildings: five percent (5%). " since the dispute lies over the calculation of the depreciation difference, it is clear that the Authority did not provide evidence of the Taxpayer's error in calculating the depreciation differences from its Zakat declaration, nor did it meet that error to support its assessment procedure on the Taxpayer to adjust the depreciation rates in the manner that the Authority claims is the method in accordance with the law, the Taxpayer indicated in its appeal list and reply memorandum that it is impossible for the difference to be greater than the full amount of depreciation charged to the income statement and stated that the depreciation differences are the difference between the depreciation charged to the income statement and the depreciation arrived at by the Authority according to the depreciation schedule prepared in accordance with the law and circulars, the Authority indicated that it adjusted the adjusted net profit by revising the depreciation difference in accordance with the rates prescribed by law, after reviewing the depreciation schedule and reconciling it with the financial statements without providing details of its calculation and the grounds that made it modify the Taxpayer's calculation, the burden of proof in this case falls on the Authority to prove the incorrectness of the Taxpayer's calculation of depreciation expense, and therefore, due to the failure of the Authority to submit the depreciation expense calculation prepared by it, which concludes the Circuit to accept the Taxpayer's appeal and cancel the decision of the Adjudication Circuit regarding this clause.

Regarding the Taxpayer's appeal regarding the clause (not deducting 25% of the adjusted profits to cover previous losses), where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit

towards this clause, as it claims that the deduction of the carried forward loss depends on the tax base and not on the profit or loss achieved by the declaration. Based on paragraphs (a) and (b) of Article (21) of the Income Tax Law relating to the posting of losses, which stipulates the following: (a) Net operating losses may be carried forward to the tax year following the year in which the loss was realized. The loss carried forward from the tax base for the following tax years shall be deducted until the full accumulated loss is recovered. The regulation shall specify the maximum limits allowed to be deducted annually. B- Net operating loss is the deductions allowed under this chapter and in excess of the taxable income in the tax year ", and based on paragraph (1) of Article (11) of the Executive Regulations of the Income Tax Law related to the carry-over of losses, which stipulates the following: "The Taxpayer has the right to carry forward the adjusted operating losses, according to the controls of the law and these regulations for tax purposes, to the tax years following the year of loss by reducing the profits of the following years until the full accumulated operating losses are recovered, without being limited to a specific period, provided that the maximum allowed deduction in each tax year does not exceed (25%) of the annual profit in accordance with the Taxpayer's declaration." according to the provisions of the articles, the Taxpayer is entitled to deduct the losses carried forward from the taxable profit so that what is deducted does not exceed (25%) of the annual profit according to the Taxpayer's declaration, and a review of the Taxpayer's declaration shows that in its declaration submitted to the Authority, it declared a net profit of SR (8,428,562), thus, in accordance with Article 11(1) of the Executive Regulations of the Income Tax Law, the Taxpayer is entitled to carry forward the adjusted operating losses to the tax years following the year of loss by reducing the profits of the following years until the accumulated operating losses are fully recovered without being restricted to a specific period, which leads the Circuit to accept the Taxpayer's appeal and annul the decision of the Adjudication Circuit regarding this clause.

with regard to the Taxpayer's appeal on the remaining clauses at issue in the case, the Circuit has no fault in adopting the grounds for the decision under appeal without adding to them, if it determines that these grounds make it unnecessary to introduce anything new, since in upholding the decision with the content of these grounds, it is clear that the Circuit did not find any objections to the decision that merit a response beyond what is contained in these grounds; whereas it is established that the decision under appeal regarding the dispute regarding the clauses under appeal was consistent with the valid grounds on which it was based and sufficient to carry its judgment since the issuing Circuit scrutinized the dispute and came to the conclusion it reached in its operative part, and since this Circuit did not notice any reason to appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject the Taxpayer's appeal and uphold the decision of the Adjudication Circuit with respect to the rest of the clauses in the case, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:



### Decision:

1- Acceptance of the appeal procedurally from the Taxpayer/ ... company, commercial register (...), unique number (...) Against the decision of the third circuit for adjudicating violations and disputes of income tax in Riyadh with number (IFR-2022-6682) issued in case number (I-2021-50132) related to the tax assessment for the year 2012AD.

2- On the merits:

a- rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the (bank interest) clause.

b- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the (delay fine) clause.

c- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the (rewards) clause.

d. Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (adjusting net profits with overloaded depreciation differences).

e. Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (not deducting 25% of the adjusted profits to cover previous losses).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024-192732

Case No. I-2023-192732

### Keywords

Tax-Taxable Income-Adjustment of Net Profits with Overstated Depreciation Differences-Acceptance of Taxpayer's Appeal

### Summary:

the Taxpayer's appeal against the decision of the Third Circuit of Income Tax Irregularities and Disputes in Riyadh (IFR-2022-6682), where its appeal is based on the clause (not deducting 25% of adjusted profits to cover previous losses), claiming that the loss carryover deduction is assessment ed to the tax base and not the profit or loss realized in the declaration, and the clause (adjusting net profits with overloaded depreciation differences), claiming that the method of calculating the depreciation amount for the year in dispute does not comply with the tax law or with accounting standards applied in the Kingdom of Saudi Arabia. the Appellate Committee found that the Authority adjusted the adjusted net profit by revising the depreciation difference according to the rates prescribed by law, after reviewing the depreciation schedule and reconciling it with the financial statements without providing the details of its calculation and the grounds that made it modify the Taxpayer's calculation, the burden of proof in this case falls on the Authority to prove that the Taxpayer's calculation of the depreciation expense is incorrect, and therefore, the Authority did not submit the depreciation expense calculation prepared by it. Consequently; accepting the Taxpayer's appeal and canceling the decision of the adjudication authority.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (17) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (a,b) of Article (21) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (1) of Article (11) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425H](#)

## Facts:



The submitted appeal was heard on: 25/04/2023 AD, of/..., a national identity (...), in its capacity as the legal representative of the appellant company under the license to defend the private legal personality No. (...), on the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6682) issued in Case No. (I-2021-50132) related to the tax assessment for the year 2012 AD, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

First: Procedurally:

(a) Notwithstanding the objection regarding the bank interest clause and the delay fine clause.

(b) Accepting the objection to the remaining clauses.

Secondly: On the merits:

The Plaintiff/ Company refused... , Commercial Register No. (...) on the decision of the Defendant/Zakat, Tax and Customs Authority.

since this decision was not accepted by the Taxpayer (... company), it filed a list of appeals, which included the following:

The Taxpayer objects to the decision of the Adjudication Circuit in question, it claims that with regard to the clause (adjustment of net profits with depreciation differences overloaded), the Taxpayer explained that it is established that the adjustment of depreciation differences cannot be overloaded by an amount of (6,754,222) million riyals greater than the total depreciation expense charged to the income statement by an amount of (1,401,917) million riyals with a difference of more than four million, because the depreciation differences are the difference between the depreciation charged to the income statement and the depreciation reached by the Authority under the depreciation schedule prepared in accordance with the law and circulars, so it is impossible that the difference is greater than the full amount of depreciation charged to the income statement, and the method by which the amount of depreciation for 2012 AD was calculated at an amount of (6,754.22) million riyals is incompatible with the tax law and accounting standards applied in the Kingdom, as the Authority committed a mistake when it reached that the amount of depreciation for 2012 AD is negative, since this is negative. The clause was rejected because we did not submit the depreciation schedule or the financial statements within the declaration, as stated in the decision "because the Plaintiff did not submit the depreciation schedule within the declaration or the financial statements for the year in question". This is contrary to the fact that we submitted the documents referred to, in addition to the fact that this payment was not paid by the Defendant and was not approved by the Plaintiff. Rather, the Authority paid by approving the method of calculating this clause on the depreciation schedule and matching it with the lists submitted by us in its response memorandum. "The Authority



clarifies that it reviewed the depreciation schedule and matched it with the financial statements, from which the declarations were amended." Moreover, the decision contradicted some of it in the previous line of what was mentioned, "It turns out that the Plaintiff attached a statement of depreciation expenses from the general ledger and it was found that its classification of fixed assets came in accordance with Article (17) of the tax law." The objectionable decision also relied on the correctness of the Authority's calculation without clarification of the method of calculation and identification of supporting documents With regard to the Taxpayer's appeal regarding the clause (not deducting 25% of the adjusted profits to cover previous losses), the Taxpayer stated that based on paragraph (1) of Article (11) of the Executive Regulations of the Income Tax Law, the Circuit recognized our right to deduct the carried forward losses not exceeding (25%) "Based on the above and in accordance with the above provisions, the Plaintiff has the right to deduct the carried forward losses from the taxable profit not exceeding what is deducted (25%) from the annual profit in accordance with the Taxpayer's declaration." Then it followed by rejecting our objection: 'Upon reviewing the Plaintiff's declaration, it appears that it declared a loss in its declarations submitted to the Authority, and therefore, applying the text of paragraph (1) of Article (11) of the Executive Regulations of the Income Tax Law, it is not entitled to demand a reduction of the adjusted profit under the Authority's assessment by carried-forward losses for the disputed years.' Whereas the decision was flawed by an error in reasoning by relying on the fact that the submitted declaration declared a loss, we clarify to the honorable Circuit that the deduction of carried-forward losses is contingent upon the tax base and not upon the profit or loss realized in the declaration. Although the declaration declared a loss, the tax base established amounts due to the Authority, where the tax base is (426,037) riyals and the income tax rate of (20%) of the base value is (85,207) riyals. Because any amendment to the Taxpayer's declaration by the Authority or tax committees is a declaration for the Taxpayer and not for others, and since this clause is among the subsidiary clauses with a fixed percentage (25%) and variable value, it becomes mandatory that any change to the declaration be followed by an adjustment in the deduction of carried-forward losses. Consequently, the committee's decision must be overturned and (25%) must be deducted on any amendment to the declaration. Then the Circuit based its decision on the assumption that all losses from years prior to 2012 AD are disputed losses. We have attached and shown that the tax assessment for 2010 is not disputed and was prepared and adjusted by the Authority with a loss of (13,854,591) riyals, and accordingly we are entitled to the deduction. Therefore, the Taxpayer demands the reversal of the adjudication circuit's decision under appeal for the aforementioned grounds.

on Thursday, on: 27/06/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are written in the minutes, through video communication in accordance with the procedures of remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No: (25711) and dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for

adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:



Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and since it is with regard to the Taxpayer's appeal on the clause (adjustment of net profits with depreciation differences loaded with increase), and where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit towards this clause, as it claims that the method of calculating the amount of depreciation for the year in dispute is not in accordance with the tax law nor with the accounting standards applied in the Kingdom. Based on Article (17) of the Income Tax Law, which stipulates that: (b) Depreciable assets are classified into groups and depreciation rates as follows: 1-Fixed buildings: five percent (5%). " since the dispute lies over the calculation of the depreciation difference, it is clear that the Authority did not provide evidence of the Taxpayer's error in calculating the depreciation differences from its Zakat declaration, nor did it meet that error to support its assessment procedure on the Taxpayer to adjust the depreciation rates in the manner that the Authority claims is the method in accordance with the law, the Taxpayer indicated in its appeal list and reply memorandum that it is impossible for the difference to be greater than the full amount of depreciation charged to the income statement and stated that the depreciation differences are the difference between the depreciation charged to the income statement and the depreciation arrived at by the Authority according to the depreciation schedule prepared in accordance with the law and circulars, the Authority indicated that it adjusted the adjusted net profit by revising the depreciation difference in accordance with the rates prescribed by law, after reviewing the depreciation schedule and reconciling it with the financial statements without providing details of its calculation and the grounds that made it modify the Taxpayer's calculation, the burden of proof in this case falls on the Authority to prove the incorrectness of the Taxpayer's calculation of depreciation expense, and therefore, due to the failure of the Authority to submit the depreciation expense calculation prepared by it, which concludes the Circuit to accept the Taxpayer's appeal and cancel the decision of the Adjudication Circuit regarding this clause.

Regarding the Taxpayer's appeal regarding the clause (not deducting 25% of the adjusted profits to cover previous losses), where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit towards this clause, as it claims that the deduction of the carried forward loss depends on the tax base and not on the profit or loss achieved by the declaration. Based on paragraphs (a) and (b) of Article (21) of the

Income Tax Law relating to the posting of losses, which stipulates the following: (a) Net operating losses may be carried forward to the tax year following the year in which the loss was realized. The loss carried forward from the tax base for the following tax years shall be deducted until the full accumulated loss is recovered. The regulation shall specify the maximum limits allowed to be deducted annually. B- Net operating loss is the deductions allowed under this chapter and in excess of the taxable income in the tax year", and based on paragraph (1) of Article (11) of the Executive Regulations of the Income Tax Law related to the carry-over of losses, which stipulates the following: "The Taxpayer has the right to carry forward the adjusted operating losses, according to the controls of the law and these regulations for tax purposes, to the tax years following the year of loss by reducing the profits of the following years until the full accumulated operating losses are recovered, without being limited to a specific period, provided that the maximum allowed deduction in each tax year does not exceed (25%) of the annual profit in accordance with the Taxpayer's declaration." according to the provisions of the articles, the Taxpayer is entitled to deduct the losses carried forward from the taxable profit so that what is deducted does not exceed (25%) of the annual profit according to the Taxpayer's declaration, and a review of the Taxpayer's declaration shows that in its declaration submitted to the Authority, it declared a net profit of SR (8,428,562), thus, in accordance with Article 11(1) of the Executive Regulations of the Income Tax Law, the Taxpayer is entitled to carry forward the adjusted operating losses to the tax years following the year of loss by reducing the profits of the following years until the accumulated operating losses are fully recovered without being restricted to a specific period, which leads the Circuit to accept the Taxpayer's appeal and annul the decision of the Adjudication Circuit regarding this clause.

with regard to the Taxpayer's appeal on the remaining clauses at issue in the case, the Circuit has no fault in adopting the grounds for the decision under appeal without adding to them, if it determines that these grounds make it unnecessary to introduce anything new, since in upholding the decision with the content of these grounds, it is clear that the Circuit did not find any objections to the decision that merit a response beyond what is contained in these grounds; whereas it is established that the decision under appeal regarding the dispute regarding the clauses under appeal was consistent with the valid grounds on which it was based and sufficient to carry its judgment since the issuing Circuit scrutinized the dispute and came to the conclusion it reached in its operative part, and since this Circuit did not notice any reason to appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject the Taxpayer's appeal and uphold the decision of the Adjudication Circuit with respect to the rest of the clauses in the case, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Acceptance of the appeal procedurally from the Taxpayer/ ... company, commercial register (...), unique number (...) Against the decision of the third circuit for adjudicating violations and disputes of income tax



in Riyadh with number (IFR-2022-6682) issued in case number (I-2021-50132) related to the tax assessment for the year 2012AD.

2- On the merits:

- a- rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the (bank interest) clause.
- b- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the (delay fine) clause.
- c- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the (rewards) clause.
- d- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (adjusting net profits with overloaded depreciation differences).
- e- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (not deducting 25% of the adjusted profits to cover previous losses).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024-176508

Case No. I-2023-1765078

### Keywords

Income Tax - Taxable Income - Adding Net Profit - Accepting the Authority's Appeal

### Summary:

the Zakat, Tax and Customs Authority (ZTA) appealed the decision of the First Circuit for the Adjudication of Income Tax Violations and Disputes in Jeddah Governorate No. (IZJ -2022-2689), as its appeal is based on the clause "Adding other revenues from (...) for the year 2015 AD, the Taxpayer's tax return did not match the Taxpayer's tax return, and the clause (adding the net profit of a ... company For the year 2015 AD) in calculating the Taxpayer's share of the adjusted net profit, as the amount of the dispute relates to the difference between the Taxpayer's share of the net profit of one of the projects contained in the joint venture declaration, amounting to (2,098,090) riyals, and the amount contained in the Taxpayer's declaration, amounting to (301,310) riyals. Whereas, it has been proven to the Appeal Committee that the Taxpayer's share of the joint venture to be added to its tax base is its share of the adjusted profit of the joint venture, which shows the validity of the Authority's action. Consequently, the authority's appeal is accepted, and the decision of the adjudication committee is canceled.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (5) of Article (17) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425H](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425H](#)

### Facts:

The appeal filed on 07/02/2023 AD by the Zakat, Tax and Customs Authority against the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ -2022-2689) issued in Case No. (I-2021-78700) related to the tax assessment for 2015 AD was considered in the lawsuit

filed by the Appellee against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit stipulated the following:

First: Accepting the Plaintiff's objection to the clause of adding other revenues from (...).

Second: Accepting the Plaintiff's objection to the clause of adding a net profit for the company (...).

Third: Accepting the Plaintiff's objection to the clause of adding other revenues from (...).

fourth: Accept the Plaintiff's objection to the exclusion of costs clause.

fifth: Accept the Plaintiff's objection to the exclusion clause of the employee's share in the Provident and Social Security Fund.

sixth: Accept the Plaintiff's objection to the delay fine clause.

Whereas this decision was not accepted by the appellant (Zakat, Tax and Customs Authority), I submitted an appeal list that was reviewed by the Circuit, where the Authority's appeal lies on the clause (adding other revenues... For the year 2015 AD), the Authority clarifies that the amount of the dispute is a difference in revenues between the declarations submitted for joint ventures and what was declared in the declarations of the Taxpayer and was added to the net profit of the Taxpayer. The Authority clarified the difference through the appendix appeal list. The Authority states, based on the final report, that the Taxpayer is partially cooperative and has provided the examination team with some of the necessary documents for the purpose of examination. In addition, the Taxpayer did not submit tax returns and audited and approved financial statements to the Authority. With regard to the clause (adding the net profit of the company (...) 5 of 2015 AD), the Authority clarifies that the amount of the dispute relates to the difference between the Taxpayer's share of the net profit of the project ... (5) contained in the joint venture declaration amounting to (2,098,090) riyals and the Taxpayer declaration amounting to (301.310) riyals. The Authority clarified the differences through the appendix appeal list. The Authority reports, based on the final report, that the Taxpayer is partially cooperative and has provided the examination team with some of the necessary documents for the purpose of examination. In addition, the Taxpayer did not submit tax returns and audited and approved financial statements to the Authority. With regard to the clause (delay fine for 2015), the Authority clarifies that the delay fine was imposed on the unpaid tax differences on the regular date based on Article No. (77), paragraph (a) of the Income Tax Law, which stipulates : (In addition to the fines mentioned in Article 76 of this Law and in paragraph (b) of this Article , the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay , and this includes the delay in the payment of the tax required to be withheld and the accelerated payments calculated from the date the tax is due to the date of payment) ,as well as based on Article (68) Paragraph (1/b) of the Executive Regulations of the Income Tax Law, which stipulates: (To the fines mentioned in the previous Article (1%) of the unpaid tax for every thirty days shall be added in the following cases, including what is stated in the paragraph: - b- Delay in the payment of the tax due under the assessment of the interest) , which is calculated after the legal

date of submitting the declaration and not from the date of assessment . The Authority's action was supported by Appeal Resolution No. (1774) of 1438AH , and the Authority's action was also supported by the final judgment issued in Case No. (5245/1/S ) of 1438AH issued by the Nineteenth Administrative Circuit of the Administrative Court in Riyadh and supported by the Second Administrative Circuit of the Administrative Court of Appeal in Riyadh by Judgement No. (3404/S) of 1439AH, and it demands the acceptance of its appeal and the reversal of the decision of the Adjudication Circuit.

on Thursday, 16/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No: (25711) and dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, and the papers and documents in the case file, and after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Zakat, Tax and Customs Authority, the circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request is accepted procedurally, as it was submitted by a person with standing, and within the statutory period prescribed for its conduct.

On the merits, and with regard to the Authority's appeal on the clause (adding other revenues from ... For the year 2015 AD), and where the Authority's appeal lies in the mismatch of the Taxpayer's tax return, and based on paragraph (5) of Article (17) of the Regulations, which stipulates that: (The obligations related to the partnership shall apply to the consortium of companies (...)) this includes registration with the Authority, filing a declaration of information, and the resulting fines for non-compliance. based on paragraph (3) of Article (57) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425 AH, which stipulates the following: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make a discretionary assessment according to the Authority's view in light of the circumstances and facts related to the case and the information available to the Authority." based on the above, and upon reviewing the attached documents, the circuit found that the dispute is about the mismatch of the Taxpayer's tax return (branch of the ... company) with the project (...) Which amounts to (55%), and it was found that the Authority applied the same treatment to the first clause. Upon reviewing the Taxpayer's declaration and the project declaration, differences were found and the Taxpayer did not

provide any justifications for those differences. Expenses charged on behalf of the project..." as mentioned in the project's approval, Statement No. (9) Rental of machinery and equipment worth (413,206 SAR), outsourcing services worth (8,896,559 SAR), and outsourcing services worth (731,564 SAR) (a total of 9,628,123 SAR in accordance with the Authority's appeal regulations) and in return, the Taxpayer declared revenues for expenses charged on behalf of the project ... (6,991,102) riyals (according to Annex No. 7 related to other revenues) and as the Taxpayer stated "he did not realize the branch and did not know the basis for attributing the revenues to the tax base." Through the Circuit's review of the Taxpayer's reply list in the adjudication stage dated (27/01/2022 AD), which is clear from its response on its awareness of the basis for the Authority's assessment when it stated its disagreement with the Authority's exclusion of the difference in support services and explained the Authority's addition of other revenues and the grounds for the exclusion, which leads the Circuit to accept the appeal and cancel the decision of the Adjudication Circuit with regard to this clause.

With regard to the Authority's appeal on the clause (adding the net profit of the ... company For the year 2015 AD), and where the Authority's appeal lies in its calculation of the Taxpayer's share of the adjusted net profit, and based on paragraph No. (3) of Article (57) of the Executive Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/6/1425 AH, which stipulated the following: " The burden of proving the validity of the revenues, expenses and any other data stated in the Taxpayer's declaration shall fall on the Taxpayer. In the event that the Taxpayer is unable to prove the validity of what is stated in its declaration, the Circuit may, in addition to applying any other statutory sanctions, not permit the expenditure whose validity is not proven by the Taxpayer or make an estimated assessment according to the point of view of the Circuit in the light of the circumstances and facts related to the case and the information available to the Circuit." Based on the above, and by reviewing the documents and attachments, it became clear to the Circuit from the Authority's Appeal Regulation that the reason for the difference between the Taxpayer's share of the net profit of the project (...) In the joint venture declaration amounting to (2,098,090) riyals, and in the Taxpayer's declaration amounting to (301.310) riyals, the Taxpayer calculates its share of the net profit, while the Authority calculates its share of the adjusted net profit, and since the Taxpayer's share of the joint venture to be added to its tax base is its share of the adjusted profit of the joint venture, which shows the validity of the Authority's procedure, which ends with the acceptance of the Authority's appeal and the cancellation of the decision of the Adjudication Circuit in this clause.

With regard to the Authority's appeal on the clause (delay fine for 2015 AD), where the Authority's appeal lies in its imposition of a delay fine on unpaid tax differences on the regular date, and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes delays in paying the tax required for withholding and



accelerated payments, calculated from the date the tax is due to the date of payment."Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425H, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment", and based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law, which stipulates that "Unpaid tax means the difference between what the Taxpayer paid on the regular date, and the tax payable under the provisions of the Law. It includes the amendments made by the Authority, which have become final as stated in paragraph (2) of Article Seventy-one of these Regulations, including the cases objected to, where the fine is calculated from the date of the regular date of submission of the declaration and payment. Based on the foregoing, and the Circuit's reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Defendant, and since the dispute between the two parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the statutory texts, which ends with the Circuit partially accepting the Authority's appeal, and amending the decision of the Circuit of Settlement in this clause by imposing a delay fine on For the year 2015 AD), and an clause(adding the net profit of a ... company for the year 2015 AD) in which the Authority's appeal was accepted and the decision of the Adjudication Circuit was canceled.

Regarding the Authority's appeal on the clause (excluding recharged costs for the year 2015 AD), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the case is set, the content of the claim and the answer must be monitored before the agreement is recorded, taking into account that the origin of the case is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or Circuit, provided that the subject matter of the case or some of it is among those agreed upon." Based on the foregoing, and where it was proven to this Circuit that the Authority requested to withdraw its appeal in accordance with what was stated in the letter issued by the Authority in the supplementary note, which included: "The Authority wishes to inform the Honorable Circuit that it has withdrawn its appeal with regard to the above clause specifically, and the procedures resulting from this clause's appeal, as per the decision reached by the Dispute Resolution Circuit on the grounds thereof." therefore, the Circuit shall accept the abandonment of the litigation.



Regarding the Authority's appeal on the clause (exclusion of the employee's share in the Provident and Social Security Fund for the year 2015 AD), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement occurs before the lawsuit is seized, it is necessary to monitor the content of the lawsuit and respond before the agreement is recorded, taking into account that the origin of the lawsuit is within the jurisdiction of the circuit, even if the content of the agreement is within the jurisdiction of another court or circuit, provided that the subject of the lawsuit or some of it is among the agreed upon," and based on the foregoing, and where it was proven to this Circuit that the Authority's request to leave the appeal according to what was stated in the letter issued by it in the supplementary memorandum, which includes "The Authority states that the Taxpayer agreed to pay the tax due on it in the amount of 31,153 riyals and therefore there is no dispute about it, which the Authority demands with him to prove the end of the dispute." therefore, the Circuit shall accept the abandonment of the litigation.

With regard to the Authority's appeal on the clause (adding other revenues from ... For 2015AD), whereas, there is no fault on the part of the Circuit in adopting the grounds for the decision under appeal without adding to them, if it assesses that these grounds do not contain anything new, because in upholding them with what these grounds contain, it is certain that it did not find any objections to the decision that merit a response beyond what is contained in these grounds, and because it is proven that the decision under appeal regarding the disputed clauses was in accordance with the sound grounds on which it was based and sufficient to carry its judgment, as the issuing Circuit scrutinized the dispute in it and reached the result in its operative part since the issuing Circuit scrutinized the dispute and came to the conclusion it reached in its operative part, and since this Circuit did not notice anything that warrants commenting on it in light of the arguments raised before it, this Circuit concludes to reject the Authority's appeal and uphold the decision of the adjudication Circuit with respect to the outcome of the remaining clauses in the case, based on the grounds for the decision for doing so.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

- 1- Accepting the appeal procedurally from the appellant/Zakat, Tax and Customs Authority, against the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Jeddah Governorate No. (IZ) -2022-2689-) issued in Case No. (I-2021-78700) related to the tax assessment for 2015 AD.
- 2- On the merits:
  - a. Rejecting the Authority's appeal and upholding the decision of the Adjudication Circuit regarding the clause (adding other revenues from ... for 2015 AD).



- b. Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause (adding other revenues...). for 2015 AD).
  - c. Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause "Adding the net profit of ... for 2015 AD).
  - d. Accepting the abandonment of litigation in relation to the Authority's appeal on the clause (exclusion of reloaded costs for the year 2015 AD).
  - e. Accepting the abandonment of litigation regarding the Authority's appeal on the clause (exclusion of the user's share in the Provident and Social Security Fund for 2015 AD).
- accepting the Authority's appeal in part and amending the decision of the Adjudication Circuit regarding the 2015 AD delay fine.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024-176508

Case No. I-2023-1765078

### Keywords

Income Tax-Taxable Income-Addition of Other Income-Acceptance of the Authority's Appeal

### Summary:

the Zakat, Tax and Customs Authority (ZTA) appealed the decision of the First Circuit for the Adjudication of Income Tax Violations and Disputes in Jeddah Governorate No. (IZJ -2022-2689), as its appeal is based on the clause "Adding other revenues from (...) for the year 2015 AD, the Taxpayer's tax return did not match the Taxpayer's tax return, and the clause (adding the net profit of a ... company 2015 AD) in calculating the Taxpayer's share of the adjusted net profit. the Appellate Committee reviewed the Taxpayer's declaration and the project's declaration and found that there were differences and that the Taxpayer did not provide any justifications for these differences. The Taxpayer's reply list also proved that it understood the basis for the Authority's assessment when it stated its disagreement with the Authority's exclusion of the difference in support services and explained the Authority's addition of other revenues and the grounds for the exclusion. Consequently, the authority's appeal is accepted, and the decision of the adjudication committee is canceled.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (5) of Article (17) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425H](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425H](#)

### Facts:

The appeal filed on 07/02/2023 AD by the Zakat, Tax and Customs Authority against the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ -2022-2689) issued in Case No. (I-2021-78700) related to the tax assessment for 2015 AD was considered in the lawsuit

filed by the Appellee against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit stipulated the following:

First: Accepting the Plaintiff's objection to the clause of adding other revenues from (...).

Second: Accepting the Plaintiff's objection to the clause of adding a net profit for the company (...).

Third: Accepting the Plaintiff's objection to the clause of adding other revenues from (...).

fourth: Accept the Plaintiff's objection to the exclusion of costs clause.

fifth: Accept the Plaintiff's objection to the exclusion clause of the employee's share in the Provident and Social Security Fund.

sixth: Accept the Plaintiff's objection to the delay fine clause.

Whereas this decision was not accepted by the appellant (Zakat, Tax and Customs Authority), I submitted an appeal list that was reviewed by the Circuit, where the Authority's appeal lies on the clause (adding other revenues... For the year 2015 AD), the Authority clarifies that the amount of the dispute is a difference in revenues between the declarations submitted for joint ventures and what was declared in the declarations of the Taxpayer and was added to the net profit of the Taxpayer. The Authority clarified the difference through the appendix appeal list. The Authority states, based on the final report, that the Taxpayer is partially cooperative and has provided the examination team with some of the necessary documents for the purpose of examination. In addition, the Taxpayer did not submit tax returns and audited and approved financial statements to the Authority. With regard to the clause (adding the net profit of the company (...) 5 of 2015 AD), the Authority clarifies that the amount of the dispute relates to the difference between the Taxpayer's share of the net profit of the project ... The approval of the joint venture amounting to (2,098,090) riyals was received by the Taxpayer amounting to (301.310) riyals. The Authority clarified the difference through the appendix appeal list. The Authority reports, based on the final report, that the Taxpayer is partially cooperative and has provided the examination team with some of the necessary documents for the purpose of examination. In addition, the Taxpayer did not submit tax returns and audited and approved financial statements to the Authority. With regard to the clause (delay fine for 2015), the Authority clarifies that the delay fine was imposed on the unpaid tax differences on the regular date based on Article No. (77), paragraph (a) of the Income Tax Law, which stipulates : (In addition to the fines mentioned in Article 76 of this Law and in paragraph (b) of this Article , the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay , and this includes the delay in the payment of the tax required to be withheld and the accelerated payments calculated from the date the tax is due to the date of payment) ,as well as based on Article (68) Paragraph (1/b) of the Executive Regulations of the Income Tax Law, which stipulates: (To the fines mentioned in the previous Article (1%) of the unpaid tax for every thirty days shall be added in the following cases, including what is stated in the paragraph: - b- Delay in the payment of the tax due under the assessment of the interest) , which is calculated after the legal

date of submitting the declaration and not from the date of assessment . The Authority's action was supported by Appeal Resolution No. (1774) of 1438AH , and the Authority's action was also supported by the final judgment issued in Case No. (5245/1/S ) of 1438AH issued by the Nineteenth Administrative Circuit of the Administrative Court in Riyadh and supported by the Second Administrative Circuit of the Administrative Court of Appeal in Riyadh by Judgement No. (3404/S) of 1439AH, and it demands the acceptance of its appeal and the reversal of the decision of the Adjudication Circuit.

on Thursday, 16/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No: (25711) and dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Zakat, Tax and Customs Authority, the circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request is accepted procedurally, as it was submitted by a person with standing, and within the statutory period prescribed for its conduct.

On the merits, and with regard to the Authority's appeal on the clause (adding other revenues from ... For the year 2015 AD), and where the Authority's appeal lies in the mismatch of the Taxpayer's tax return, and based on paragraph (5) of Article (17) of the Regulations, which stipulates that: (The obligations related to the partnership shall apply to the consortium of companies (...)) this includes registration with the Authority, filing a declaration of information, and the resulting fines for non-compliance. based on paragraph (3) of Article (57) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425 AH, which stipulates the following: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make a discretionary assessment according to the Authority's view in light of the circumstances and facts related to the case and the information available to the Authority." based on the above, and upon reviewing the attached documents, the circuit found that the dispute is about the mismatch of the Taxpayer's tax return (branch of the ... company) with the project (...) Which amounts to (55%), and it was found that the Authority applied the same treatment to the first clause. Upon reviewing the Taxpayer's declaration and the project declaration, differences were found and the Taxpayer did not

provide any justifications for those differences. Expenses charged on behalf of the project..." as mentioned in the project's approval, Statement No. (9) Rental of machinery and equipment worth (413,206 SAR), outsourcing services worth (8,896,559 SAR), and outsourcing services worth (731,564 SAR) (a total of 9,628,123 SAR in accordance with the Authority's appeal regulations) and in return, the Taxpayer declared revenues for expenses charged on behalf of the project ... (6,991,102) riyals (according to Annex No. 7 related to other revenues) and as the Taxpayer stated "he did not realize the branch and did not know the basis for attributing the revenues to the tax base." Through the Circuit's review of the Taxpayer's reply list in the adjudication stage dated (27/01/2022 AD), which is clear from its response on its awareness of the basis for the Authority's assessment when it stated its disagreement with the Authority's exclusion of the difference in support services and explained the Authority's addition of other revenues and the grounds for the exclusion, which leads the Circuit to accept the appeal and cancel the decision of the Adjudication Circuit with regard to this clause.

With regard to the Authority's appeal on the clause (adding the net profit of the ... company For the year 2015 AD), and where the Authority's appeal lies in its calculation of the Taxpayer's share of the adjusted net profit, and based on paragraph No. (3) of Article (57) of the Executive Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/6/1425 AH, which stipulated the following: " The burden of proving the validity of the revenues, expenses and any other data stated in the Taxpayer's declaration shall fall on the Taxpayer. In the event that the Taxpayer is unable to prove the validity of what is stated in its declaration, the Circuit may, in addition to applying any other statutory sanctions, not permit the expenditure whose validity is not proven by the Taxpayer or make an estimated assessment according to the point of view of the Circuit in the light of the circumstances and facts related to the case and the information available to the Circuit." Based on the above, and by reviewing the documents and attachments, it became clear to the Circuit from the Authority's Appeal Regulation that the reason for the difference between the Taxpayer's share of the net profit of the project (...) In the joint venture declaration amounting to (2,098,090) riyals, and in the Taxpayer's declaration amounting to (301,310) riyals, the Taxpayer calculates its share of the net profit, while the Authority calculates its share of the adjusted net profit, and since the Taxpayer's share of the joint venture to be added to its tax base is its share of the adjusted profit of the joint venture, which shows the validity of the Authority's procedure, which ends with the acceptance of the Authority's appeal and the cancellation of the decision of the Adjudication Circuit in this clause.

With regard to the Authority's appeal on the clause (delay fine for 2015 AD), where the Authority's appeal lies in its imposition of a delay fine on unpaid tax differences on the regular date, and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes delays in paying the tax required for withholding and



accelerated payments, calculated from the date the tax is due to the date of payment."Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment", and based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law, which stipulates that "Unpaid tax means the difference between what the Taxpayer paid on the regular date, and the tax payable under the provisions of the Law. It includes the amendments made by the Authority, which have become final as stated in paragraph (2) of Article Seventy-one of these Regulations, including the cases objected to, where the fine is calculated from the date of the regular date of submission of the declaration and payment. Based on the foregoing, and the Circuit's reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Defendant, and since the dispute between the two parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the statutory texts, which ends with the Circuit partially accepting the Authority's appeal, and amending the decision of the Circuit of Settlement in this clause by imposing a delay fine on For the year 2015 AD), and an clause(adding the net profit of a ... company for the year 2015 AD) in which the Authority's appeal was accepted and the decision of the Adjudication Circuit was canceled.

Regarding the Authority's appeal on the clause (excluding recharged costs for the year 2015 AD), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the case is set, the content of the claim and the answer must be monitored before the agreement is recorded, taking into account that the origin of the case is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or Circuit, provided that the subject matter of the case or some of it is among those agreed upon." Based on the foregoing, and where it was proven to this Circuit that the Authority requested to withdraw its appeal in accordance with what was stated in the letter issued by the Authority in the supplementary note, which included: "The Authority wishes to inform the Honorable Circuit that it has withdrawn its appeal with regard to the above clause specifically, and the procedures resulting from this clause's appeal, as per the decision reached by the Dispute Resolution Circuit on the grounds thereof." therefore, the Circuit shall accept the abandonment of the litigation.



Regarding the Authority's appeal on the clause (exclusion of the employee's share in the Provident and Social Security Fund for the year 2015 AD), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement occurs before the lawsuit is seized, it is necessary to monitor the content of the lawsuit and respond before the agreement is recorded, taking into account that the origin of the lawsuit is within the jurisdiction of the circuit, even if the content of the agreement is within the jurisdiction of another court or circuit, provided that the subject of the lawsuit or some of it is among the agreed upon," and based on the foregoing, and where it was proven to this Circuit that the Authority's request to leave the appeal according to what was stated in the letter issued by it in the supplementary memorandum, which includes "The Authority states that the Taxpayer agreed to pay the tax due on it in the amount of 31,153 riyals and therefore there is no dispute about it, which the Authority demands with him to prove the end of the dispute." therefore, the Circuit shall accept the abandonment of the litigation.

With regard to the Authority's appeal on the clause (adding other revenues from ... For 2015AD), whereas, there is no fault on the part of the Circuit in adopting the grounds for the decision under appeal without adding to them, if it assesses that these grounds do not contain anything new, because in upholding them with what these grounds contain, it is certain that it did not find any objections to the decision that merit a response beyond what is contained in these grounds, and because it is proven that the decision under appeal regarding the disputed clauses was in accordance with the sound grounds on which it was based and sufficient to carry its judgment, as the issuing Circuit scrutinized the dispute in it and reached the result in its operative part since the issuing Circuit scrutinized the dispute and came to the conclusion it reached in its operative part, and since this Circuit did not notice anything that warrants commenting on it in light of the arguments raised before it, this Circuit concludes to reject the Authority's appeal and uphold the decision of the adjudication Circuit with respect to the outcome of the remaining clauses in the case, based on the grounds for the decision for doing so.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Accepting the appeal procedurally from the appellant/Zakat, Tax and Customs Authority, against the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Jeddah Governorate No. (IZ) -2022-2689 issued in Case No. (I-2021-78700) related to the tax assessment for 2015 AD.

2- On the merits:

a. Rejecting the Authority's appeal and upholding the decision of the Adjudication Circuit regarding the clause (adding other revenues from ... for 2015 AD).



- b. Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause (adding other revenues...). for 2015 AD).
  - c. Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause "Adding the net profit of ... for 2015 AD).
  - d. Accepting the abandonment of litigation in relation to the Authority's appeal on the clause (exclusion of reloaded costs for the year 2015 AD).
  - e. Accepting the abandonment of litigation regarding the Authority's appeal on the clause (exclusion of the user's share in the Provident and Social Security Fund for 2015 AD).
- accepting the Authority's appeal in part and amending the decision of the Adjudication Circuit regarding the 2015 AD delay fine.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-176902

Case No. I-2023-176902

### Keywords

Income tax - Taxable income - Invalid income added to the tax base - Accepting the Taxpayer's appeal

### Summary:

the Taxpayer's objection to the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (ISR-2022-1947) regarding the tax assessment for 2019 AD. his appeal is based on the clause (incorrect revenue added to the tax base for 2019 AD), explaining that the audited financial statements do not disclose any revenue from new contracts during this year. whereas it was proven to the Appellate Committee that the Taxpayer submitted the approved financial statements that did not disclose any revenues for any contracts during the year 2019 AD, it also submitted a letter confirming the revenues related to the executed works disclosed to the Authority, in addition to an email containing a statement from the Taxpayer's representative that the letter was rejected by the National Information Center and that it could not obtain the required documents from the Authority unless this request was submitted directly from the government agencies (the Authority), so the original validity of the Taxpayer's declaration and the Authority did not provide any evidence to prove its claim regarding these revenues. Consequently; the Taxpayer's appeal is accepted and the decision of the circuit is canceled.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph(a) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (3) of Article (67) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425H](#)
- Paragraph (1) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425H](#)

- Paragraph (2) of Article (71) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425H](#)

### Facts:



the appeal filed on 09/02/2023 AD, from/... National ID number: ) In its capacity as a legal representative of the appellant company under the foreign agency, the decision of the Second Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ISR-2022-1947) issued in Case No. (I -2021-55101) related to the tax assessment for the year 2019 AD, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

- 1- Rejection of the lawsuit regarding the clause of incorrect revenues added to the tax base for 2019 AD.
- 2- Proof of the end of the dispute regarding the exclusion of expenses clause for the year 2019 AD.
- 3- Rejection of the lawsuit regarding the clause of imposing a delay fine on the additional income tax liability for the year 2019 AD.

Whereas this decision was not accepted by the Taxpayer (branch of a ... company The Taxpayer's appeal lies on the clause (incorrect revenues added to the tax base for the year 2019 AD). The Taxpayer clarifies that it does not agree to the Authority's treatment by adding revenues from contracts to the tax base for the following grounds: A-The Branch wishes to draw the attention of the esteemed Appeal Committee to Article (8) (1) of the Income Tax Law. B- The branch would like to inform the esteemed Appeal Committee that it has not concluded any new contracts since 2014 AD. C- The branch carried out all work related to contracts signed with customers and disclosed the relevant revenues in the tax returns submitted annually. In this regard, the Branch is pleased to provide details of the contract revenue submitted to the Authority along with the annual tax returns up to 31 December 2014 AD. D-The esteemed Appeal Committee will note that the branch has subjected its financial statements for 2019 AD to scrutiny. A copy of the audited financial statements is attached as Appendix B for ease of reference to the esteemed Appeal Committee. The esteemed Appeal Committee must be aware that the information disclosed in the audited financial statements is reliable and approved by banks, government, suppliers as well as by the tax authorities. Accordingly, the Branch would like to inform the esteemed Appeal Committee that the audited financial statements do not disclose any revenues from any contracts during 2019 AD. The Authority should have taken this fact into account. If there were any contract concluded between the branch and any customer, the branch would have to disclose that contract and its subsequent revenues and expenses in the audited financial statements and tax return. (c)In addition to the above, the branch would like to inform the Appeal Committee that the branch, through its lawyer, contacted the National Information Center and requested a letter stating that there is no ongoing contract between the National Information Center and the branch, based on the request of the Authority to provide confirmation from the National Information Center. H- Unfortunately, the NIC did not provide any positive response. G- Furthermore, the NIC Executive



Management has informed the Branch Representative that they will approve this request (i.e. provide a confirmation statement on contracts) only if this request is made directly from government entities. A copy of this statement received by the Branch from its representative is attached as Annex C to facilitate the review of the esteemed Appeal Committee. (d) Because the authority is a governmental authority in the Kingdom of Saudi Arabia, the branch requests that the authority be directed to send a confirmation statement request from the National Information Center. Y- The branch understands the importance of the confirmation statement. Had the branch been able to obtain it from the National Information Center, we would have been pleased to provide that information to the esteemed Appeal Committee and the Authority. However, due to some difficulties in obtaining the confirmation statement from a governmental authority in the Kingdom of Saudi Arabia, it is totally unfair for the Branch to settle the additional taxes and delay fines for the revenues that the Branch has not implemented/collected in the Kingdom of Saudi Arabia. Accordingly, the Branch submits this modest request from the Authority in order to obtain this confirmation statement. T- The Branch has completed all signed contracts by 31 December 2016 AD and there is no pending works for any contract to be reported or taxed in the Kingdom of Saudi Arabia. The Branch would also like to submit to the esteemed Appeal Committee in Appendix D, a letter confirming the revenues related to the executed works that have been fully disclosed to the Authority. With regard to the clause (delay fine), the Taxpayer clarifies that the Authority must not impose any delay fine, because the additional tax obligation arose due to errors and technical differences in the point of view between the Taxpayer and the Authority. Paragraph (a) of Article (77) of the Income Tax Law provides for the imposition of a delay fine in the event of delay in the payment of income tax, withholding tax and accelerated tax. The delay fine shall be calculated from the due date of the tax until the date of payment. The branch wishes to inform the members of the esteemed committee that the tax due has been defined in paragraph (2) of Article (71) of the executive regulations of the law. The esteemed appellate committee notes that the regulations provide for the imposition of a delay fine under paragraph (a) of Article (77) of the Income Tax Law and Article (68) of the executive regulations. In the event of delay in paying the tax when it becomes final, whether after the Taxpayer accepts the assessment or the end of the objection procedures. Accordingly, the delay fine shall be imposed from the date on which the obligation becomes final under the regulations. Furthermore, paragraph (a) of Article (77) of the Income Tax Law and Article (68) of the Executive Regulations did not intend to punish the Taxpayer for the delay in determining the amount of tax due as a result of the lengthy assessment procedures followed by the Authority. Based on the above, the branch believes that the delay fine cannot be imposed in this case in accordance with paragraph No. (2) of Article (71) of the Executive Regulations of the Income Tax Law. Furthermore, the Branch wishes to draw the attention of the esteemed Appeal Committee to a set of recent decisions issued by the Tax Appeal Committee (Decision No. 1333 of 1434 AH and Decision No. 1355 of 1435AH), where the esteemed Committee acknowledged that the delay fine is calculated from the date of issuance of a final decision and not from the date of submitting the declaration. In light of the conditions set out in the circular, a delay fine must not be imposed on the branch,

even in the event of a dispute between the Taxpayer and the authority, and it is required to accept its appeal and overturn the decision of the Adjudication Circuit.

on Wednesday, 15/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No: (25711) and dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:



Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and with regard to the Taxpayer's appeal on the clause (incorrect revenues added to the tax base for the year 2019 AD), and where the Taxpayer's appeal lies in the fact that the audited financial statements do not disclose any revenues from any contracts during the year 2019 AD, and based on paragraph (2) of Article (10) of the Executive Regulations of the Sharia Pleadings Law, which stipulates the following: "If it is necessary to write about a procedure or inquiry in the subject matter of the case, this shall be by a letter from the Circuit, and it shall attach with it a copy of what it needs from the case file unless it is necessary to send the file." based on the above, the Circuit finds that the dispute lies around the Authority's action to add the disputed amount to the net profit, which is represented by the profits of unauthorized contracts with a profit rate of (20%), because the Taxpayer did not provide a statement from the National Information Center that no contracts were awarded to the company, while the Taxpayer indicated that it did not conclude any new contracts since 2014 AD, and after reviewing the case file and the defenses and documents it contains, the Circuit found that the Taxpayer submitted certified financial statements that did not disclose any revenues for any contracts during 2019 AD, in addition, the Taxpayer submitted an email (Appendix D) containing a statement from the Taxpayer's representative that the letter was rejected by the National Information Center and it was unable to obtain the required documents from the Authority unless this request was submitted directly from the government agencies (the Authority), so the original validity of the Taxpayer's declaration and the Authority did not provide any evidence to prove the validity of its claim regarding these revenues, which leads the Circuit to accept the Taxpayer's appeal and cancel the decision of the Adjudication Circuit.

With regard to the Taxpayer's appeal on the clause (delay fine), where the Taxpayer's appeal lies in the Authority's imposition of the delay fine, and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes delays in paying the tax required for withholding and accelerated payments, calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment", and based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law, which stipulates that "Unpaid tax means the difference between what the Taxpayer paid on the regular date, and the tax payable under the provisions of the Law. It includes the amendments made by the Authority, which have become final as stated in paragraph (2) of Article Seventy-one of these Regulations, including the cases objected to, where the fine is calculated from the date of the regular date of submission of the declaration and payment. Based on the foregoing, and where the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the tax due arising under the application of the provisions of the law and the amendments made by the Authority, and where the dispute between the two parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the statutory texts, and where the Circuit's decision in the first clause (incorrect revenues added to the tax base for the year 2019) ended up accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit, and where what is related to it takes its judgment, which ends

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Accepting the appeal procedurally of the Taxpayer's ... commercial Register No. (...), unique number (...), against the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh City (ISR-2022-1947) issued in Case No. (I-2021-55101-I) related to the tax assessment for 2019 AD.

2- On the merits:

a- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (incorrect revenue added to the tax base for 2019 AD).

b- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the (delay fine) clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-179134

Case No. I-2023-179134

Keywords

Income Tax - Taxable Income - Foreign Procurement - Acceptance of the Authority's Appeal

Summary:

the Zakat, Tax and Customs Authority's objection to the decision of the Second Circuit for adjudicating income tax violations and disputes in Riyadh (ISR-2022-1989) regarding the tax assessment for the years 2016 AD and 2017 AD. the Authority's appeal lies on the clause (external purchases) as it claims that there is a difference that has not been proven. the Taxpayer referred to the Authority's argument that this is due to the existence of another project and for another client, and upon reviewing the documents submitted to verify the validity of what the Taxpayer referred to, it is clear that no proof of this difference was provided, which makes it clear that the Authority's argument about the existence of an unproven difference is correct, and the Taxpayer did not provide the supporting documents. Consequently, the Authority's appeal is accepted partially, and the decision of the circuit regarding this clause is amended.

Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (a,b) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425H](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425H](#)

Facts:

The submitted appeal was heard on: 19/02/2023 AD, from the Zakat, Tax and Customs Authority, on the decision of the Third Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh, No. (ISR-2022-1989) issued in Case No. (I-2021-82232) related to the tax assessment for 2016 AD and 2017AD, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:



1- Cancellation of the Defendant's action with regard to foreign procurement.

2- Cancel the Defendant's action in relation to the delay fine clause.

Whereas this decision was not accepted by the appellant (Zakat, Tax and Customs Authority), it submitted an appeal regulation that was reviewed by the Circuit, where lies the appeal of the Authority on the clause (foreign procurement for the years 2016 AD and 2017 AD), the Authority adjusted the profit by external procurement teams loaded with an increase due to the failure of the Taxpayer to provide documentary proof and the difference was calculated, and during the objection phase, the meeting was held with the Taxpayer on Sunday, 19/06/2021AD, where the Taxpayer stated during the meeting that the Presidency of the Saudi Naval Forces concluded an agreement with the Presidency of Contracts in the US Army to provide maintenance support services and a company was appointed... International (the subject of the lawsuit) as a subcontractor to the Presidency of Contracts in the US Army, and the Presidency of the US Army issues purchase invoices in the name of the ... company International and these materials are shipped in the name of the customer (land forces), which appointed the ... company As an agent for the clearance of materials from customs, according to the letter of the Ministry of Defense No. 12910-20-HQ dated 24/08/2020 AD, the Taxpayer submitted an extract of the agreement between the Presidency of the Saudi Land Forces and the US Army and the ... company Regarding procurement, the Taxpayer was requested to submit (5) samples for each year of the purchase orders issued by the Presidency of the Land Forces of..., and in return for the purchase orders issued by ... For external suppliers and invoices issued by suppliers, and evidence of the clearance of these purchases by the Presidency of the Land Forces by the company .. and later submitted the required assignee and by reviewing the samples submitted, it is clear that the procurement process is as follows: a. The Presidency of the Land Forces issues a purchase order for the required equipment to the ... company (Objected Company). b. The ... company (The objecting company) issues a purchase order to external suppliers, and therefore the external supplier issues the invoice in the name of the ... company When purchases arrive in the Kingdom, the ... company By issuing an invoice to the Land Forces for the value of these purchases. The land forces then send a letter to the customs to end the clearance procedures through the ... company which is carried out under the supervision of the representatives of the land forces. However, the Taxpayer did not submit the customs declaration that clarifies that the import is registered in the name of the Ministry of Defense represented by the ground forces. The objection was rejected as the burden of proof falls on the Taxpayer according to Article (57) Paragraph (3) of the Executive Regulations of the Income Tax Law, which stipulates: (The burden of proving the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration falls on the Taxpayer , and in the event that it is unable to prove the validity of what is stated in its declaration, the Authority may, in addition to applying any other statutory penalties, not allow the expense that is not proven to be valid by the Taxpayer or make an estimated assessment in accordance with the point of view of the interest in the light of the circumstances and facts related to the case and the information available to the Authority). The Authority adheres to the validity and integrity of its procedure, and the issued the decision subject of the appeal to

cancel the Authority's decision to provide the appellant with the supporting documents. The Authority responds that it has reviewed the approval of the value of the tax and submitted by the Taxpayer, as it was evident from the data submitted by the Taxpayer, which is represented in a letter of confirmation of the value of the imported materials and parts certified by the Command of the Air Force of the Land Forces. Accordingly, it is clear that there is a difference that has not been proven as described above. Accordingly, what the Circuit concluded is incorrect and the Authority appeals against the difference that has not been proven. regarding the Authority's appeal regarding the delay fine clause, the Authority clarifies that the delay fine was imposed on tax differences not paid within the statutory deadline based on paragraph (a) of Article 77 of the Income Tax Law, which stipulates that: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes the delay in paying the tax required for withholding and accelerated payments and is calculated from the date the tax is due to the date of payment", as well as based on paragraph (1/b) of Article 68 of the Executive Regulations of the Income Tax Law, which states: "1% of the unpaid tax shall be added to the fines mentioned in the previous article for every thirty days of delay in the following cases, including those mentioned in paragraph: - B - Delay in the payment of the tax due under the interest assessment ." As the fine is consequential, and given the Authority's appeal on the above clause, it maintains the validity of its procedure in imposing the delay fine on the unpaid tax differences. Accordingly, the Authority demands the acceptance of its appeal and the reversal of the decision of the Adjudication Circuit regarding the clauses subject to its appeal.

on Monday, 15/04/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes met via video conferencing in accordance with the procedures for remote video litigation; based on the provisions of Clause No. (2) of Article Fifteen of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit did not find it necessary for the parties to the appeal to be present, the Circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and with regard to the Authority's appeal on the clause (foreign procurement for the years 2016 AD and 2017 AD), where the Authority's appeal lies in the appeal on the acceptance of the adjudicator's objection to the disputed clause, as it claims that there is a difference that has not been proven,

based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. Be related to the tax year D. Not be of a capitalistic nature." according to Article (57) paragraph (3) of the Executive Regulations of the Income Tax Law, which stipulates that "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." after reviewing the case file and its documents, it turns out that the Taxpayer submitted a certification from the Land Forces Aviation Command about the existence of imports from the Taxpayer in the amount of (13,469,303 riyals) for 2016 and (14,972,571 riyals) for 2017 AD, as well as a certification from the Ministry of Defense represented by the Saudi Armed Forces that the ... company logistics services company is the shipping agent, and obligations are fulfilled upon receipt of materials at the shipping agent's location. Regarding the Authority's appeal concerning this clause, that the import differences according to the Authority's assessment for the years 2016 AD and 2017 AD amount to (14,477,908) riyals and (15,338,693) riyals respectively. The Authority clarifies that the Taxpayer submitted supporting documents valued at (13,469,303) riyals for the year 2016 and valued at (14,972,571) riyals for the year 2017 AD. Therefore, it is clear that there is a difference that was not substantiated valued at (1,008,605) riyals and (366,122) riyals respectively. whereas the Taxpayer indicated that the Authority's payment was due to the existence of another project "Project ..." and for another customer "... Accordingly, by referring to the documents submitted to verify the validity of the Taxpayer's claim, it is clear that no proof of this difference was provided, which makes it clear that the Authority's claim about the existence of a difference that has not been proven, and therefore, due to the Taxpayer's failure to provide supporting documents, the Circuit concludes to partially accept the Authority's appeal and amend the decision of the Dispute Resolution Circuit regarding this clause.

With regard to the Authority's appeal on the clause (delay fine), and based on paragraph (a) of Article (77) of the Income Tax Law, which stipulates: "In addition to the fines mentioned in Article Seventy-Six of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay, and this includes the delay in paying the tax required to be withheld and the accelerated payments calculated from the date the tax is due to the date of payment." Based on paragraph (1/b) of Article (68) of the Executive Regulations of the Income Tax Law, which stipulates: "In addition to the fines mentioned in the previous article, (1%) of the unpaid tax shall be added for every thirty days of delay in the following cases, including what is stated in the paragraph: - b- Delay in paying the tax



due under the assessment ing of the interest." Based on the foregoing, and by reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the dispute between the two parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the statutory texts, and where the decision with regard to the first clause (external procurement differences), ended up amending the decision of the Circuit; and since the subordinate continues to be followed in the judgment; which ends with the amendment of the decision of the Adjudication Circuit regarding this clause.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

- 1- Accepting the appeal procedurally from the applicant Zakat, Tax and Customs Authority against the decision of the Second Circuit for adjudicating income tax violations and disputes in Riyadh, No. (ISR-2022-1989) issued in Case No. (I-2021-82232) regarding the tax assessment for the years 2016 AD and 2017 AD.
- 2- On the merits:
  - a. Accepting the Authority's appeal in part and amending the decision of the Adjudication Circuit regarding the clause (external procurement for 2016 AD and 2017 AD).
  - b. Amending the decision of the Adjudication Circuit with respect to the "Penalty for Delay" clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-176810

Case No. ZI-2023-176810

### Keywords

Income tax – Taxable income – Purchases imported through subsidiaries – Acceptance of Taxpayer appeal

### Summary:

The Taxpayer and the Zakat, Tax and Customs Authority objected to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2615) related to the tax assessment for the years 2016 AD to 2018 AD, where the Taxpayer's appeal lies on the clause (imported purchases through subsidiaries) for the years 2017 AD and 2018 AD, where it demanded the deduction of imported purchases according to a report from a certified public accountant. Whereas, the Authority's appeal lies on some clauses such as (Zakat and Tax Expenses) and (Entertainment Expenses) for the years 2016 AD to 2018 AD. The Authority decided to abandon its appeal on these two clauses, which necessitated the acceptance of abandoning the litigation. This means that the Taxpayer's appeal was partially accepted for imported purchases through subsidiaries for 2017 AD and 2018 AD.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)

### Facts:

The appeal was considered on 08/02/2023 AD, from the Zakat, Tax and Customs Authority, and from/ ... National ID number (...) In its capacity as an agent under the power of attorney No. (...) for the appellant company, the First Circuit's decision to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2615) issued in Case No. (ZI-2021-21385) related to the tax assessment for the years 2016

AD to 2018 AD, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

1- Rejection of the Plaintiff's objection regarding the clause of violation of the legal procedures for examination and assessment for the years from 2016 AD to 2018 AD.

2-Cancel the Defendant's decision regarding the clause of zakat and tax expenses for the years from 2016 AD to 2018 AD.

3-Cancel the Defendant's decision regarding the entertainment expenses clause for the year 2017 AD.

4- Rejection of the Plaintiff's objection regarding the clause of currency expenses for the years from 2016 AD to 2018 AD.

5-With regard to the clause of purchases imported through subsidiaries:

A-Proof of the end of the dispute for 2016 AD

B- Rejection of the Plaintiff's objection for the years 2015 AD and 2017 AD.

6- Rejection of the Plaintiff's objection regarding the clause of general expenses related to the manufacturing process for the year 2018 AD.

7- Rejection of the Plaintiff's objection regarding the clause of import purchases received for a period prior to the years 2016 AD to 2018 AD.

8- Rejection of the Plaintiff's objection regarding the clause of transportation expenses for the year 2016 AD.

9. With regard to the difference in book loss clause:

A-Proof of the end of the dispute for 2017 AD.

B- Rejection of the Plaintiff's objection for the year 2018 AD.

10- Rejection of the Plaintiff's objection regarding the local procurement clause for the years from 2016 AD to 2018 AD.

11- Rejection of the Plaintiff's objection regarding the accumulated losses of the Saudi partner for the year 2016 AD.

12- Rejection of the Plaintiff's objection regarding the clause of payables for the years from 2016 AD to 2018 AD.

13-Proof of the end of the dispute regarding the delay penalties clause.

since this decision was not accepted by the Taxpayer (a ... company For the limited industry), it submitted an appeal list reviewed by the Circuit, where the Taxpayer's appeal lies on the clause (imported purchases



through subsidiaries for the year 2017 AD), and with regard to the clause (imported purchases through subsidiaries for the year 2018 AD), the Taxpayer explains that the Authority accepted imports made through the ... company Trade and industrial services for the year 2016 AD and the end of the dispute was proven, but the Authority refused to deduct the amounts of imports made through other subsidiaries for the years 2017 AD and 2018 AD. The Taxpayer also explained that some of the foreign purchases that were disclosed were actually imported under the commercial register of subsidiaries. The Taxpayer also stated that it submitted a report from a certified public accountant confirming the nature of the company's transactions, but the dismissal ignored these facts during the issuance of the decision. he requests that its appeal be accepted and the decision of the Adjudication Circuit be reversed. this decision was not acceptable to the appellant (Zakat, Tax and Customs Authority), so it filed a list of appeals, which was reviewed by the Circuit, in which the Authority requested that its appeal be accepted and the decision of the Adjudication Circuit be reversed.

on Wednesday, 15/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No: (25711) and dated: 08 /04/1445 AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:



upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and with regard to the Taxpayer's appeal on the clause (purchases imported through subsidiaries for the years 2016 AD, 2017 AD and 2018 AD): A- With regard to the clause (Purchases imported through subsidiaries for the year 2017 AD). B- With regard to the clause (purchases imported through subsidiaries for the year 2018 AD), and where the Taxpayer's appeal lies in the fact that it submitted a report from a certified public accountant confirming the nature of the company's transactions, and based on the text of paragraph (1/a) of Article (5) of the Executive Regulations for the Collection of Zakat issued by the Minister of Finance Resolution No. (2082) dated 01/06/1438 AH related to expenses that may be deducted, which stipulated that: "All ordinary and necessary expenses required for the activity are deductible whether paid or accrued to reach the net result of the activity provided that the following



controls are met:" (a) That it is an actual expense supported by supporting documents or other evidence that enables the authority to verify its validity, even if it relates to previous years, "and based on paragraph (3) of Article (20) of it, which stipulates that: "The burden of proving the validity of the clauses mentioned in the Taxpayer's Zakat declaration and any other data shall fall on the Taxpayer. In the event that the Taxpayer is unable to prove the validity of the clauses mentioned in its declaration, the Authority may not approve the clause whose validity is not proven by the Taxpayer or make an estimated assessment in accordance with the Authority's point of view in the light of the circumstances and facts related to the case and the information available to it." Based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. C- It shall be related to the tax year D- It shall not be of a capital nature ", and based on paragraph (3) of Article (57) of the Income Tax Executive Regulations, which stipulates the following: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Upon the circuit's review of what was presented by both parties, it became clear that the Taxpayer is demanding the deduction of differences in external purchases imported on behalf of subsidiary companies valued at (5,633,254) riyals and (13,474,975) riyals for the years 2017 AD/2018 AD. It appears that the grounds for the Authority's action were due to the failure to provide supporting documents, namely confirmation letters for the years in dispute. Upon referring to the case file, the Taxpayer submitted documents represented by the customs declaration of the subsidiary company for the year 2018 AD, and the Taxpayer also submitted (Attachment No. 13) an examination report from a certified public accountant for receiving imported purchases through subsidiary companies by the company/... The chartered accountant was informed of the import data of the subsidiaries, which included an amount of (5,633,254) riyals during 2017 AD. And that the value of foreign purchases in the amount of (16,805,856) according to the customs declaration, as what belongs to the company (...) (13,414,121) riyals according to the statement sent by the Circuit for the year 2018 AD. Since the Taxpayer submitted a report from a chartered accountant that the external purchases were imported by the aforementioned subsidiaries. Which ends with the Circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding imported purchases through subsidiaries with a value of (5,633,254) riyals for the year 2017 AD, and a partial acceptance regarding imported purchases through subsidiaries with a value of (13,414,121) riyals for the year 2018 AD. (C) With regard to the Taxpayer's appeal against the clause (imports made through a ... company For the year 2016



AD), and based on the above, and since the Authority accepted imports made through the ... company For the year 2016 AD, which ends with the Circuit to prove the end of the dispute.

Regarding the Authority's appeal on the clause (Zakat tax expenses for the years from 2016 AD to 2018 AD), and the clause (entertainment expenses), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If an agreement is reached before the case is settled, it is necessary to record the content of the case and the response before documenting the agreement, taking into consideration that the original case must fall within the jurisdiction of the circuit, even if the content of the agreement falls within the jurisdiction of another court or circuit, provided that the subject matter of the case or part of it is among what has been agreed upon." Based on the foregoing, and whereas it has been established to this circuit that the Authority has requested to abandon the appeal according to what was stated in the letter issued by it in the supplementary memorandum, which contained: "The Authority informs the honorable circuit of abandoning its appeal regarding the above-mentioned decision related to the two clauses above, and the procedures that resulted from the Authority's appeal, in accordance with what the adjudication circuit's decision concluded in its reasoning," therefore, the Circuit shall accept the abandonment of the litigation.

with regard to the Taxpayer's appeal on the remaining clauses, the Circuit has no fault in adopting the grounds for the decision under appeal without adding to them when it assesses that these grounds make it unnecessary to introduce anything new, because in upholding them with what these grounds contain, it is certain that it did not find any objections to the decision that merit a response beyond what is contained in these grounds as the issuing Circuit scrutinized the dispute and came to the conclusion it reached in its operative part, and as this Circuit did not notice anything that warrants appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject the Taxpayer's appeal and uphold the decision of the Adjudication Circuit in its conclusion on the remaining clauses, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

First: Acceptance of the appeal procedurally of the Taxpayer/ ... company Commercial Registration No. (...), unique number (...), and the Zakat, Tax and Customs Authority, against the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2615) issued in Case No. (ZI-2021-21385-) related to the tax assessment for the years 2016 AD to 2018 AD.

Second: On the merits:



- 1- Acceptance of the abandonment of the litigation in relation to the Authority's appeal on the clause (Zakat tax expenses for the years from 2016 AD to 2018 AD).
- 2- Accepting the abandonment of the litigation in relation to the Authority's appeal on the clause (entertainment expenses).
- 3- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (violation of the regular procedures for examination and assessment for the years 2016 AD to 2018 AD).
- 4- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (currency expenses for the years 2016 AD, 2017 AD and 2018 AD).
- 5- Regarding the Taxpayer's appeal on the clause (purchases imported through subsidiaries for the years 2016, 2017 AD and 2018 AD):
  - A- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (Purchases imported through subsidiaries for the year 2017 AD)
  - B- Accepting the partially assigned appeal and amending the decision of the Adjudication Circuit regarding the clause (Purchases imported through subsidiaries for the year 2018 AD).
  - C- Proof of the end of the dispute regarding the Taxpayer's appeal on the clause (imports made through the ... company for the year 2016 AD).
- 6- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (general expenses related to the manufacturing process for 2018 AD).
- 7- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (import purchases received for a period prior to the years 2016 AD to 2018 AD).
- 8- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (transportation expenses for the year 2016 AD).
- 9- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (difference in book loss for the year 2018 AD).
- 10- Rejection of the Taxpayer's appeal and support of the decision of the Circuit of Adjudication regarding the clause ((Local Procurement) for the years 2016 AD, 2017 AD and 2018 AD).
- 11- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (accumulated losses of the Saudi partner for the year 2016 AD).
- 12- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (payables for the years 2016 AD, 2017 AD and 2018 AD).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-173371

Case No. W-2023-173371

### Keywords

Income Tax - Taxable Income - Capital Gains Tax - Acceptance of the Authority's Appeal

### Summary:

the Authority's objection to the decision of the Second Circuit of Income Tax Violations and Disputes in Jeddah Governorate No. (IZJ-2022-2586) regarding the tax assessment for the year 2016 AD. his appeal lies on the clause (Capital Gains Tax), where the basis for calculating the capital gains tax of the partner - the seller - requires determining the selling value based on (the contractual or market value of this share or the book value of it in the company's accounts), whichever is greater on the other hand, its appeal lies in the imposition of a delay fine on the Taxpayer for tax differences not paid within the statutory deadline, as the Authority challenged the criteria for determining the penalties and requested to amend the decision. as the Appeals Circuit found that the Authority calculated the sales value based on the nominal value, this confirms the correctness of the Authority's calculation of the sales value, and with regard to the delay fine, the Authority's procedure of imposing the delay fine from the due date on the first clause was proven correct. Consequently: Acceptance of the authority's appeal.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (a,b) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (7) of Article (16) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)
- Paragraph (1,3) of Article (68) of [The Executive Regulations of the Income Tax Law issued by the Minister of Finance's Decision No. \(1535\) dated 11/06/1425 AH](#)
- Paragraph (2) of Article (71) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)

## Facts:



the appeal filed on 29/01/2023 AD, from/..., National ID No. (...), in its capacity as an agent under the power of attorney No. (...), the lawyer's license No. (.../...), and the appeal filed on 31/01/2023 AD by the Zakat, Tax and Customs Authority, against the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2586) issued in Case No. (W-2021-86495) related to the tax assessment for the month of June 2016, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

First: Modify the Defendant's action on the Capital Gains Tax Clause in accordance with the merits of the decision.

Second: Modify the Defendant's action on the delay fine clause in accordance with the merits of the decision.

since this decision was not accepted by the Taxpayer (a ... company For Contracting Limited), it submitted an appellate list, which was reviewed by the Circuit, and included the outcome that the Taxpayer is demanding to accept its appeal and overturn the decision of the Adjudication Circuit. This decision was also not accepted by the appellant (Zakat, Tax and Customs Authority), so it submitted an appeal regulation that was reviewed by the Circuit, where the Authority's appeal lies in relation to the clause (capital gains tax). The Authority clarifies that the Circuit stated that the Plaintiff submitted the waiver contract and the value of the waiver and is considered a reason for amending the clause. The Authority confirms that the Plaintiff did not submit any document related to the waiver or the value of the waiver, as the documents submitted by the Plaintiff are minutes of the meeting of the administration, ministerial decisions and precedents of the adjudication committees. Therefore, the Authority pushes the irregularity of the Authority's amendment of the clause because it is based on a document that does not exist. Accordingly, it confirms that it is not permissible to rely on documents that have not been seen by the Authority, based on Article (29) of the work rules of the committees for adjudicating tax violations and disputes issued by Royal Decree No. (26040) dated 21/04/1441 AH, which stated that "It is not permissible to rely on the papers of one of the parties to the case or its memoranda. The Authority reports that the Taxpayer acknowledged in its statement of claim that the process of changing quotas and introducing new partners is the transfer and transfer of its own share to its own company and it did not mention that it waived the share. The Authority reports that it imposed a capital gains tax on the Taxpayer as the ownership shares changed with the departure of the foreign partner on 8/5/2016 AD. The capital gains tax on the foreign partner was calculated at a value of (1,157,968) riyals (details of the calculation are attached to the Authority's response list). It is also clear that there is a real transfer of ownership of the foreign partner (...) the company Contracting Co., Ltd. to the company of... Trading & Contracting (Non-Resident Company). The existence of a material consideration for the transition process or not does not change the reality of the transfer of ownership to a legal personality

independent of the previous owner. The company to which the Taxpayer's share is transferred is a company that is not wholly owned by the previous owner, but also owned by other persons. As for what the Taxpayer raised that the cost basis is equal to the transferred amount, this is not possible as the previous owner's ownership of the share was in 2006 AD, while the transfer subject to capital gains was in 2016 AD, that is, a difference of (10) years based on the above, the Authority confirms the validity of its procedure based on Article 1, paragraph (2/b) of the Regulations. With regard to the clause (delay fine), the Authority clarifies that the delay fine was imposed on the unpaid tax differences on the regular date based on Article No. (77), Paragraph (A) of the Income Tax Law, which stipulates : (In addition to the fines mentioned in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay, and this includes the delay in the payment of the tax required to be withheld and the accelerated payments calculated from the date the tax is due to the date of payment), as well as according to Article (68) Paragraph (1/b) of the Executive Regulations of the Income Tax Law, which stipulates: (To the fines mentioned in the previous Article, (1%) of the unpaid tax shall be added for every thirty days of delay in the following cases, including what is stated in the paragraph: - b- Delay in the payment of the tax due under the assessment ing of interest). it asks that its appeal be accepted and that the decision of the Adjudication Circuit be reversed.

on Monday, 08/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No. (25711) and dated: 08 /04 /1445 AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and with regard to the Zakat, Tax and Customs Authority's appeal on the clause (Capital Gains Tax), and where the Authority's appeal lies in the fact that the basis of calculating the capital gains tax for the partner - the seller - requires determining the sale value on the basis of (the contractual or market value of this share or its book value in the company's accounts), whichever is greater, and comparing it with the cost basis on the other hand, and based on paragraph (7) of Article (16) of the Executive Regulations of

the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/6/1425 AH, which stipulates the following: "7. Capital gains on the disposal of assets in the absence of statutory accounts at the Taxpayer (seller) are estimated as follows: b- If the asset sold is a share in a financial company, the selling value is determined on the basis of the contractual value or the market value of this share or its book value in the company's accounts, whichever is greater, and is compared to the cost basis to determine the capital gain. d- In other cases, the selling value is determined by either the contractual value or the market value, whichever is greater, and this is compared to the cost basis to determine the capital gain, provided that the capital gain is not less than 15% of the cost basis. the selling partner must notify the Authority of the sale and pay the taxes due on the resulting capital gains within sixty days from the date of sale, and the buyer is jointly responsible with the selling partner in paying any dues to the Authority as a result. ". - article 9 of the Law stipulates: "Gains or losses resulting from the disposal of assets: gain or loss realized on the disposal of an asset is the difference between the compensation received for the asset and its cost basis. d - The cost basis of an asset purchased, produced, manufactured or constructed by the Taxpayer is the amount paid by the Taxpayer for the asset or incurred in cash or in kind in the process of acquiring it. (h) If a Taxpayer disposes of an asset by gift or inheritance, the person disposing of the asset shall be treated as if it had received a compensatory value for the asset equal to its market value at the time of disposal, unless paragraph (i) of this article applies." Based on what was mentioned above, and whereas the Taxpayer's appeal concerns the calculation of capital gains tax on the basis that there was no sale transaction resulting in capital gains or losses, as he transferred shares from the partner to a company owned by the partner and his family, the circuit affirms that this principle is completely incompatible with the tax law, as disposing of shares constitutes a sale regardless of its form. The transfer or assignment of shares is a form of sale, as is clearly evident from the attached articles of incorporation and the assignment contract that proves and confirms the exit transaction. Regarding the other aspect of the dispute, which is the method of calculating capital gains, the circuit found that the Taxpayer demands that the cost basis be calculated based on the partner's share in the capital (provided that the base does not fall below 15% of the cost). Upon the circuit's review of the Authority's calculation, it was found that it used the capital at the partner's percentage as the cost basis, which shows there is no dispute about this, as acknowledged by the Taxpayer in his appeal brief that it should be (1,000,000) riyals. Therefore, the dispute is about the sale value according to what the Taxpayer indicated, that it should be the capital (partner's percentage) valued at (1,000,000) riyals, while it appears that the Authority used the sale value based on the nominal value of (6,789,842) riyals. This confirms the correctness of the Authority's calculation of the sale value, as determining the sale value should be based on (the contractual or market value of this share or its book value in the company's accounts), whichever is greater, according to paragraph (7-b) of Article (16) of the regulation. The Taxpayer's reliance on paragraph (7-d) was incorrect, as both articles confirmed the same treatment for the sale value mentioned above. However, what applies to the Taxpayer's case is the text of paragraph (7-b) of Article (16) of the regulation, since the Taxpayer's legal entity is a limited liability company, which is considered a capital

company. It should also be noted that the nominal value was adopted due to the Taxpayer's failure to provide the sale agreement to determine the contractual value of the shares. Therefore, the Taxpayer's demand that the sale value be determined by the capital (partner's percentage) does not detract from this. Consequently, the circuit concludes by accepting the Authority's appeal and canceling the adjudication circuit's decision on this clause.

With regard to the Zakat, Tax and Customs Authority's appeal on the clause (delay fine), where the Authority's appeal lies in imposing a delay fine on unpaid tax differences on the regular date, and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425H, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the Law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these Regulations, including cases that are disputed, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on the foregoing, and the Circuit's reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the dispute between the two parties did not result in a significant difference in the interpretation of the statutory texts, which makes it clear to the Circuit the validity of the Authority's procedure to impose the delay fine from the due date on the first clause with which the Circuit ended up accepting the Authority's appeal and canceling the decision of the Adjudication Circuit, and accordingly the matter with which the Circuit ends up accepting the Authority's appeal and canceling the decision of the Adjudication Circuit in this clause.

with regard to the Taxpayer's appeal on the remaining clauses, the Circuit has no fault in adopting the grounds for the decision under appeal without adding to them when it assesses that these grounds make it unnecessary to introduce anything new, because in upholding them with what these grounds contain, it is certain that it did not find any objections to the decision that merit a response beyond what is contained in these grounds as the issuing Circuit scrutinized the dispute and came to the conclusion it reached in its operative part, and as this Circuit did not notice anything that warrants appeal or comment on it in light of



the defenses raised before it, this Circuit concludes to reject the Taxpayer's appeal and uphold the decision of the Adjudication Circuit in its conclusion on the remaining clauses, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

1- Acceptance of the appeal procedurally, submitted by / ... Company Ltd, Commercial Registration No. (...), unique number (...), and the Zakat, Tax and Customs Authority, against the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Jeddah Governorate No. (IZJ-2022-2586) issued in Case No. (W-2021-86495) regarding the tax assessment for June 2016 AD.

2- On the merits:

a- Canceling the decision of the Adjudication Circuit and rejecting the Taxpayer's appeal with regard to the capital gains tax clause.

b- Accepting the Authority's appeal, canceling the decision of the Adjudication Circuit and rejecting the Taxpayer's appeal with regard to the delay fine clause.





Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-191202

Case No. I-2023-191202

### Keywords

Income Tax - Taxable Income - 15% estimated profit on import differences - Partial acceptance of Taxpayer's appeal

### Summary:

the Taxpayer's appeal against the decision of the First Circuit for the Resolution of Income Tax Violations and Disputes in Dammam (IZD-2023-90702), where its appeal on the (delay fine) clause is that the Authority rejected the delay fine, and the (15% estimated profit on import differences) clause is that the differences are imports of clients on their behalf. the Appellate Committee found that the dispute is documentary on the merits, and the Taxpayer provided samples of invoices and settlement of import differences and copies of contract clauses that prove that the Taxpayer is responsible for importing and delivering materials on behalf of its clients, and with regard to the Taxpayer's reference to excluding customs fees, the Circuit found that the difference in the calculation between the Taxpayer and the Authority lies in customs fees and that the Taxpayer had categorized customs fees as an expense in a separate clause. this means partially accepting the Taxpayer's appeal and modifying the decision of the adjudication Circuit with regard to this clause, and accepting its appeal and canceling the decision of the adjudication Circuit with regard to the (delay fine) clause.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (4) of Article (16) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425 AH](#)
- Paragraph (1) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425 AH](#)
- Paragraph (b) of Article (77) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425 AH](#)

## Facts:



The appeal was considered on 29/03/2023 AD, by/..., National ID No. (...), in its capacity as a lawyer under the lawyer's license No. (...) According to agency number (...) On behalf of the appellant company, on the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2023-90702) issued in Case No. (I-2022-90702) related to the tax assessment for the year 2018 AD, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit stipulated the following:

1- Cancel the Defendant's decision related to the clause of non-approval of the claim to reverse the provision.

2- Amending the Defendant's decision related to the clause of imposing a discretionary profit of 15% on the import difference.

3- Amending the Defendant's decision related to the delay fine clause.

Since this decision was not accepted by the Taxpayer (... Company), it submitted an appeal brief which the circuit reviewed. The Taxpayer's appeal focuses on the clause (imposing an estimated profit of 15% on import differences). The Taxpayer clarifies that it does not agree with the Authority's decision to assess an estimated profit of 15% on import differences and the adjudication committee's decision to partially reject the appeal regarding this clause, where the committee acknowledged that the Taxpayer submitted a sample of supporting documents valued at (5,376,031) riyals out of (9,153,609) riyals in dispute, which represents a large sample amounting to (58,745) of the total differences. The Taxpayer points out that what the committee indicated - that the total differences amount to (9,153,609) riyals in its decision - is incorrect, as the amount referred to by the Authority includes customs duties amounting to (459,246) riyals, which are completely separate from the actual imports in dispute. Therefore, the import difference between the customs statement and the Taxpayer's tax return amounts to only (8,658,363) riyals. In light of the primary committee's error above, the Taxpayer proved supporting documents for a sample amounting to (62.21%) of the total differences, and the Taxpayer submitted the supporting documents and an appendix for calculating the differences. In addition to the above, the Taxpayer wishes to draw the attention of the Committee to the fact that the Authority has not clarified the basis for assessment and its decision or calculation with regard to this clause. Accordingly, the Taxpayer has obtained customs declarations and customs declaration and compared the value of imports between the customs declaration and the tax declaration and analyzed the differences and matched them with the invoices. A copy of the customs declaration is attached above in (Appendix 7). Without notifying the Taxpayer of the legal basis, the reason for the assessment, or the method of calculating the assessment by the Authority, the Taxpayer was unable to identify the supporting documents for its position. Accordingly, the Taxpayer argues that the Authority violated Article (65) of the Income Tax Law. Accordingly, the Taxpayer submitted the settlement of the

differences and explains that the import differences mentioned in the table amounting to (8,658,363) riyals represent the value of the equipment and materials imported by the Taxpayer on behalf of its customers. Whereas, despite their import in the name of the Taxpayer, these imports were not declared and claimed to be deducted in the Taxpayer's books or tax return, as the purchases were recorded as an expense in the books and accounts of the Taxpayer's customers. Whereas it is common for the Taxpayer's declarations and customs statements to reflect different amounts of imports for good and logical grounds, according to the Authority's Circular No. (9/2030) dated 15/4/1430 AH in Appendix (9), where it identified several cases in which it is common and acceptable that differences arise between imports, one of the common cases that lead to such differences is when the Taxpayer imports materials, goods or equipment on behalf of others, which is exactly the same as the case of the Taxpayer. The Taxpayer submitted copies of the terms of contracts that stipulate that the Taxpayer is responsible for importing and delivering materials on behalf of its customers. With regard to the clause (delay fine), the Taxpayer explains that the Authority has assessment ed the delay fines at the rate of (1%) of the unpaid tax for each (30) days of delay. In light of the grounds provided by the Taxpayer above, it is clear that the tax must not be imposed or applied and therefore the delay fines must be canceled in full. Without prejudice to the above, even assuming the imposition or application of the tax, the Authority has incorrectly assessment ed the above-mentioned fines starting from the date of the tax due for each period. The Taxpayer pays that the tax becomes due only under Article (77) of the Income Tax Law when it is final. In this regard, the Taxpayer refers to Article (71) (2) of the Executive Regulations of the Income Tax Law, which stipulates four cases in which the tax dues are final. Accordingly, the Taxpayer confirms that the tax assessment issued by the Authority is not considered final in accordance with Article (71) (2) of the Executive Regulations of the Income Tax Law referred to above, since the Taxpayer did not accept this assessment while the matter remains clarified in dispute and no final solution has been reached by the Appeal Committee. Therefore, the tax has not become "due" nor "final" and there is no requirement to pay delay fines in accordance with Article (77) of the Income Tax Law and demands to accept its appeal and overturn the decision of the Adjudication Circuit.

on Wednesday, 05/06/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video conferencing in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No: (25711) and dated: 08 /04 /1445 AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated

in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and with regard to the Taxpayer's appeal on the clause (imposing an estimated profit of 15% on the import teams), and where the Taxpayer's appeal lies that the difference is imports belonging to customers on their behalf, and based on Article (16) Paragraph (4) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "4/ The estimated net profit shall be determined according to the available evidence, facts or indicators related to the activity of the Taxpayer, its nature and the circumstances surrounding it, and in all cases not less than the rates coming from the revenues of the Taxpayer (activity) of the profession, the percentage of profits, royalties and royalties 75% management fees 80% technical and advisory services 20% freelancers such as doctors, lawyers, accountants and engineers 20%. General services offices 20%. Stores selling fruits, vegetables, meat, fish, birds and livestock 10%. Petrol stations 10%. Contractors in the field of construction works 10%. Other activities other than the above 15%.". whereas, the dispute lies in the Authority's action to profit from import differences amounting to SAR 9,153,609 for the year 2018 AD by 15% between the value of imports in the Taxpayer's declaration compared to the imports according to the customs declaration, and the Taxpayer stated that the difference is for imports belonging to customers on their behalf, whereas, the Taxpayer attached an analytical statement "Annex 7" showing that the difference is SAR 8,658,363 after excluding customs duties worth SAR 495,246, and where the dispute is documentary on the merits, and where the Taxpayer provided samples of invoices and settlement of import differences and copies of contract clauses "Annex 10 Contract ...." "Annex 11 Company Contract..." "Annex 12 Construction Contract ..." with regard to the Taxpayer's reference to the exclusion of customs fees, the Circuit found that the difference in the calculation between the Taxpayer and the Authority lies in the customs fees and that the Taxpayer had categorized the customs fees as an expense in a separate clause, which leads the Circuit to partially accept the Taxpayer's appeal and modify the decision of the Adjudication Circuit with regard to this clause.

With regard to the Taxpayer's appeal on the clause (delay fine), where the Taxpayer's appeal lies in the Authority's rejection of the delay fine, and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes delays in paying the tax required for withholding and accelerated payments, calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax



shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law: "Unpaid tax means the difference between what the Taxpayer paid on the regular date, and the tax payable under the provisions of the Law, including the amendments made by the Authority, which have become final as stated in paragraph (2) of Article Seventy-one of these Regulations, including the cases objected to, where the fine is calculated from the date of the regular date of submission of the declaration and payment." Based on the foregoing, and the Circuit's reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the dispute between the parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the statutory texts, which ends with the Circuit accepting the Taxpayer's appeal regarding the delay fine on the clause in which its appeal was accepted for the fall of the original taxation.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Acceptance of the appeal procedurally, submitted by / ... Company commercial Register (...), unique number (...), against the decision of the First Circuit for the Resolution of Income Tax Violations and Disputes in Dammam City (IZD-2023-90702) issued in Case No. (I-2022-90702) related to the tax assessment for 2018 AD.

2- On the merits:

A-accepting the Taxpayer's appeal in part and amending the decision of the Adjudication Circuit regarding the clause (imposing a 15% estimated profit on the import difference).

b- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the (delay fine) clause.



# Additional Rules for Determining the Tax Base



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-169890

Case No. I-2023-169890

### Keywords

Income Tax - Additional rules for determining the tax base - Discretionary tax assessment - Acceptance of the Authority's appeal

### Summary:

the Zakat, Tax and Customs Authority's objection to the decision of the Third Circuit for adjudicating income tax violations and disputes (ITR-2022-6130) regarding the tax assessment for the years 2018 AD and 2019 AD. the Authority's appeal lies in objecting to the Circuit's modification of the estimated assessment made by the Authority, as the estimated profit percentage was calculated at (15%) instead of (50%), based on the fact that the Taxpayer's activity does not require direct costs and that the bank deposits refer to its activity as a social media celebrity. the authority explained that Article (16) of the Executive Regulations of the Income Tax Law allows for discretionary assessment according to the nature and circumstances of the activity, not less than 15%, without specifying a higher ceiling for the percentage. the Appeals Circuit upheld the validity of the Authority's action and overturned the decision of the Adjudication Circuit. this means accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the estimated tax assessment clause for the years 2018 AD and 2019 AD.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH](#)
- Paragraph (4) of Article (16) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425 AH](#)

### Facts:

the appeal filed on 15/01/2023 AD by the Zakat, Tax and Customs Authority (ZTA) against the decision of the Third Circuit for the Adjudication of Income Tax Violations and Disputes in Riyadh (ITR-2022-6130) issued in Case No. (I-2021-67640) related to the tax assessment for the year 2018 AD and 2019 AD, in the

case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

accept the Plaintiff's objection..... (Resident ID No . ...), based on the Defendant's/ ZATCA's decision procedurally terms, and modifying the Defendant's decision in substantive terms.

as this decision was not accepted by the appellant (Zakat, Tax and Customs Authority), it filed a list of appeals, which included the following:

As the Authority objects to the decision of the Appealed Adjudication Circuit, it claims that, with regard to (the estimated tax assessment for 2018 AD and 2019 AD), it has held the Taxpayer accountable under communication No. (...) Its content is that he is a resident conducting commercial activity within the category of "social media platform celebrities" and was assessed based on bank account statements which revealed the existence of amounts deposited repeatedly and in high volumes. It also became clear that the Taxpayer conducts commercial work through developing marketing plans, and accordingly he was registered for income tax as a non-Saudi natural person practicing activity in the Kingdom based on Article (2) paragraph (b) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH, where he was assessed based on the amounts deposited in his personal account based on Article (6) paragraph (b) of the same law and according to the tables attached to the Authority's appeal statement. Since it became clear that the Taxpayer is a resident conducting commercial activity (marketing) inside the Kingdom without remitting income tax and was assessed on the amounts referred to above where the Taxpayer did not clarify the location of the service beneficiaries, and through the agreements it became clear that all beneficiaries for whom marketing studies were conducted are entities based in the Kingdom of Saudi Arabia, accordingly the objection was rejected for the correctness and soundness of the Authority's procedure based on Article (6) paragraph (b) issued by Royal Decree No. (M/1) dated 15/1/1425 AH of the Income Tax Law, and based on Article (57) paragraph (3) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425 AH. While the Circuit that issued the decision under appeal amended the Authority's decision by applying profit to those amounts at a rate of (15%) instead of (50%), justifying this by not following the regulations and calculating the estimated profit rate at (15%). The Authority responds to this that the Taxpayer's activity is providing advertisements through social media applications and he is among the Taxpayers with verified accounts. The Authority also states that this type of activity has no costs, and the profit rate was determined based on what the Authority sees as facts and circumstances related to the Taxpayer, and as stipulated in paragraph (4) of Article (16) of the Executive Regulations of the Income Tax Law, which makes it clear that what the article stipulated was "not less than" and did not specify the rate precisely but rather the text came with "not less than," which makes it clear that the Authority's procedure is correct and the Taxpayer must prove otherwise and clarify what costs he has and that the profit rate on that activity is (15%), as Article sixteen of the Executive Regulations of the Income Tax Law clarified the minimum limit and did not specify the higher rate with "not less than" what is shown in the table and



the rate was not set with an upper limit, and therefore this was estimated by the Authority due to the nature of the Taxpayer's activity and the absence of proven costs and expenses. Moreover, the Taxpayer did not submit its declaration on the statutory dates. Accordingly, the Authority has the right to bind the Taxpayers based on paragraph (3a) of Article 16 of the Executive Regulations of the Income Tax Law. Moreover, the Authority states that if the Circuit calculates a percentage of (15%) on that type of activity, this will make the Taxpayers not submit their declarations and financial statements due to the fact that the percentage of (15%) is small, as there are no costs on that activity as previously explained. Accordingly, the Authority requests to overturn the decision of the Adjudication Circuit on the clauses subject to appeal for the above grounds.

on Thursday, 01/02/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via video conferencing in accordance with the procedures of remote video litigation; based on the provisions of clause no:(2) of Article Fifteen of the Rules of Work of the Committees for Adjudicating Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441 AH; after reviewing the appeal submitted by the parties to the case, and after examining the contents of the case file, and where the circuit found nothing to require the presence of the parties to the appeal, the circuit decided that the case has become ready for adjudication and issuing a decision on its subject, so the circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request is accepted procedurally, as it was submitted by a person with standing, and within the statutory period prescribed for its conduct.

On the merits, and as for the Authority's appeal regarding (the estimated tax assessment for 2018 AD and 2019 AD), and where its appeal is that it has held the Taxpayer accountable under communication No. (...) Its content is that it is a resident who carries out the commercial activity within the cases of famous "social media platforms" and was accounted for based on bank statements, through which it became clear that there are amounts deposited frequently and high, and it was also found that the Taxpayer carries out the business through the work of marketing plans, and accordingly it was registered with the income tax as a non-Saudi natural person practicing the activity in the Kingdom. article 16, paragraph (4) of the Executive Regulations of the Income Tax Law stipulates that "The estimated net profit shall be determined in accordance with the available evidence, facts or indicators related to the Taxpayer's business, nature and surrounding circumstances, and in no case less than the following rates of the Taxpayer's revenues: ... activities other than those mentioned above are 15%. Based on the foregoing, and after reviewing the



appeal brief and the reply memorandum, it appears that the dispute between the parties concerns the estimated tax assessment for the years 2018 AD and 2019 AD. It is evident that the subject of the Authority's appeal lies in its non-acceptance of the circuit's decision to modify its procedure by calculating an estimated profit rate of (15%) instead of calculating it at (50%). The Authority views that using the estimated method for the social media influencer track, and considering the bank deposits and the absence of activity-specific costs, it conducted the estimated assessment at a rate of (50%). The Authority clarified that the Taxpayer has no activity costs and did not provide the costs of providing advertisements that he referred to, nor did he provide evidence of this through the financial statements. Consequently, the circuit concludes by accepting the Authority's appeal and canceling the adjudication circuit's decision on this clause.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Acceptance of the appeal procedurally from the Zakat, Tax, and Customs Authority against the decision of the third circuit regarding violations and disputes of income tax in Riyadh numbered (ITR-2022-6130) issued in case number (I-2021-67640) related to the tax assessment for the year 2018 AD and 2019 AD.

2- On the merits:

Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause (Estimated Tax Linkage for 2018 AD and 2019 AD), according to the grounds and rationale provided in this decision.



## Withholding Tax



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-171744

Case No. W-2023-171744

Keywords

Withholding Tax - Royalties - Accepting the Authority's Appeal

Summary:

the Zakat, Tax and Customs Authority (ZTA) appealed the decision of the Second Circuit of Income Tax Violations and Disputes in Riyadh (ISR-2022-1855), where the ZTA's appeal lies in the clause (withholding tax) on the amounts paid to a ... company as royalties subject to a 15% tax rate according to the Income Tax Law, emphasizing that the Taxpayer did not provide an agreement clarifying the nature of the business relationship. the Authority also objected to the cancellation of the delay fine, maintaining that it was validly imposed based on the law and the executive regulations, and supporting its actions with previous rulings and appeals decisions. since the Appeals Circuit found that the disputed payments relate to software usage rights and licenses, which fall within the concept of royalties according to Article 1 of the Income Tax Law, Article 68 of the same law, and the provisions of tax treaties, it considers the Authority's action to impose withholding tax on these amounts to be correct. it also validated the imposition of the delay fine in accordance with the relevant statutory articles. The consequence of this; accepting the Authority's appeal.

Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (1) of [The Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (a) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (A) of Article (68) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (3) of Article (76) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)

## Facts:



The submitted appeal was heard on: 26/01/2023 AD, from/the Zakat, Tax and Customs Authority, on the decision of the Second Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ISR-2022-1855) issued in Case No. (W-2021-69654) related to withholding tax for the month of December 2018 AD, in the lawsuit filed by the appellant against him against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

First: accepting the claim filed by the Plaintiff/... company , Commercial Registration No. (...), against the Defendant/Zakat, Tax and Customs Authority, procedurally.

Secondly: On the merits: Cancellation of the Defendant's procedure related to withholding tax for the month of December 2018 AD. According to the grounds.

Since this decision was not accepted by the appellant (Zakat, Tax and Customs Authority), it submitted an appeal regulation that was reviewed by the Circuit, where the Authority's appeal lies on the clause (withholding tax), so the Authority clarifies that when assessment ing the amounts paid to the ... company. To withholding tax at a rate of (15%) as royalties, and during the objection phase, the Taxpayer was requested on 6/7/2021 AD to submit a company ledger account... With the agreement concluded and selected samples with documentary proof and clarifying how to sell the product from negotiation until achieving revenues and determining who negotiates (and signs contracts with documentary proof), the Taxpayer submitted the required documents and it was found that the ... company Awarded a ... company The right to market its products in the Kingdom of Saudi Arabia to major customers (government agencies, banks, large companies), which is a non-exclusive distributor where the ... company By pricing the licensing agreement and then competing with others by selling these agreements. Once the competition is won, the procedures of baptizing and the necessary guarantees are terminated and then signing contracts, including listing ... For the customer in the licensed customers to issue licenses and then the license code mentioned in the agreement is sent to the customer from ... directly, and therefore the service provided by the ... company Which is represented in the supply of software and licenses of use, through which companies enable buyers of software and licenses to use them are included in the royalties, that is, the use of intellectual rights owned by the ... company As well as the response to the Authority's inquiries, where several questions were asked to the Taxpayer, including who concludes contracts with Saudi companies and whether there is a specific profit rate and who determines it and informs the company that it concludes the agreement between the client (large companies and government agencies..) The company in force with regard to supply, maintenance and financial matters, and the customer signs automatically with ... With regard to the terms and conditions of the licenses, such as non-copying, resale and misuse, and the customers pay the fees to the ... company International in exchange for obtaining a ... company On a profit rate determined by the ... company In addition, the Taxpayer has not submitted any agreement concluded

between him and the ... company clarifying the relationship and the manner of dealing between them, and therefore it maintains the validity of its procedure of subjecting the amounts paid to external parties to withholding tax at a rate of (15%).

With regard to the clause (delay fine), the Authority clarifies that it imposed a delay fine on unpaid tax differences on the regular date based on Article No. (77), paragraph (a) of the Income Tax Law, which stipulates : (In addition to the fines mentioned in Article 76 of this Law and in paragraph (b) of this Article , the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay , and this includes the delay in the payment of the tax required to be withheld and the accelerated payments calculated from the date the tax is due to the date of payment) ,as well as based on Article (68) Paragraph (1/b) of the Executive Regulations of the Income Tax Law, which stipulates: (To the fines mentioned in the previous Article (1%) of the unpaid tax for every thirty days shall be added in the following cases, including what is stated in the paragraph: - b- Delay in the payment of the tax due under the assessment of the interest) , which is calculated after the legal date of submitting the declaration and not from the date of assessment. It also supported the Authority's action by Appeal Resolution No. (1774) of 1438 AH. It also supported the Authority's action by the final judgment issued in Case No. (5245/1/S) of 1438 AH issued by the Nineteenth Administrative Circuit of the Administrative Court in Riyadh and supported by the Second Administrative Circuit of the Administrative Court of Appeal in Riyadh by Judgement No. (3404/S) of 1439 AH. It also supported the Authority's action by several appeal decisions, including: Appellate Decision No. (1913) of 1439 AH, as well as Appellate Decision No. (1925) of 1439 AH, and added that the decision of the Second Chapter Circuit in Riyadh, the subject of the appeal, in fact, by its decision, contradicted the decision of the First Circuit Court of Appeal to adjudicate income tax violations and disputes in accordance with Appellate Decision No. (IR-2020-28) in Case No. (ZIW-2018-1657), which included in the grounds for the decision the following text: (Since it is decided that the fine is due from the date of the tax due until the date of payment, and since the nature of the dispute between the two parties is documentary in the clauses in question and did not result in a significant difference in the interpretation of the statutory texts, and since the date of the tax due date is the date of its knowledge of it or what it is supposed to know about it from the date of its maturity, and therefore it was decided by the Circuit that the validity of imposing fines on the clauses in respect of which the tax was rejected from the date of the tax legally due date), as these clauses from a valid and lasting point of view and did not lose their origin.

on Monday, 04/03/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video conferencing in accordance with the procedures for remote video litigation; based on the provisions of Clause 2 of Article 15 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441 AH; after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for

adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:



upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and where the Authority's appeal on the clause (withholding tax), and where the Authority's appeal lies in its commitment to subject the amounts paid to the ... company to withholding tax at the rate of (15%) as royalties, and by reviewing Article 1 of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/1/1425 AH, which states: "The royalty: Payments received for the use or right to use intellectual property rights, including but not limited to copyrights, patents, designs, industrial secrets, trademarks, trade names, know-how, trade and business secrets, goodwill, payments received for information relating to industrial, commercial or practical expertise, or for vesting the right to exploit natural and mineral resources.", and by reviewing paragraph (a) of Article (68), "Every resident, whether or not it is assigned under this Law, and the permanent establishment in the Kingdom of a non-resident, who pays an amount to a non-resident from a source in the Kingdom shall deduct a tax from the amount paid in accordance with the following prices: Royalty or royalty..... 15%.", and considering paragraph (1) and (2) of Article (12) of the Agreement between the Government of the Kingdom of Saudi Arabia and the Government of Ireland for the Avoidance of Double Taxation and for the Prevention of Tax Evasion in Respect of Taxes on Income, signed on 19/10/2011 AD, and in force as of 01/12/2012 AD, which stipulates the following: "1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State. 2. However, such royalties may also be taxed in the Contracting State in which they arise in accordance with its laws, but if the beneficiary is the beneficial owner of the royalties, the tax imposed shall not exceed: a) Five percent (5%) of the total amount of royalties paid for the use - or right to use - of industrial, commercial or scientific equipment. b) Eight per cent (8%) of the total amount of royalties in all other cases." Based on the above, and by reviewing the documents attached to the case file, it becomes clear that the Taxpayer has submitted several agreements with the ... company. however, it did not attach a valid agreement for the period in question, and as it appears that the Taxpayer's work with the ... company limited to the collection of orders and collection of payments for licensed software and services and the purchase and delivery of welcome kits, software CDs and/or any additional information and materials related to the software under the Channel Partner License, and the agreements in other years and attached by the Taxpayer in paragraph (7) Reimbursement: "if the company fails to make any payments by the due date, the take any of the following actions: (1) may ... holding all pending orders,

suspending other shipments, and ceasing to provide services under any agreement between the company even receives... "All payments due under this Agreement." This makes it clear that the nature of the transaction is not simply the purchase and resale of the software. the right to stop the use of the licenses if payments are not received from the Taxpayer, so payments to ... this does not affect the Taxpayer's statement that the Authority imposed a withholding tax on the amount of (12,000,000) riyals for the tax period of December 2018 AD, which represented the price of an initial payment to an offshore company, but the order was not completed, so the amount was returned to the company's account, as it is clear from the attached bank statement that the mentioned amount is not related to the period in dispute (September transfer date and November return date), which leads the Circuit to partially accept the Authority's appeal and amend the decision of the Adjudication Circuit with regard to this clause.

With regard to the Authority's appeal on the clause (delay fine), and where the Authority's appeal lies in its imposition of a delay fine on unpaid tax differences on the regular date, and by reviewing paragraph (a) of Article (77) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates that "In addition to the fines mentioned in Article Seventy-Six of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for each thirty days of delay, and this includes the delay in the payment of the tax required to be withheld and the accelerated payments, calculated from the date the tax is due to the date of payment.", and reviewing paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates that "1% of the unpaid tax shall be added to the fines mentioned in the previous article for every thirty days (b) Delay in paying the tax due under the assessment of the authority.", and by reviewing paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law, which includes that " the unpaid tax means the difference between what the Taxpayer paid on the regular date, and the tax payable under the provisions of the Law, including the amendments made by the Authority, which have become final as stated in paragraph (2) of Article seventy-one of these Regulations, including the cases objected to, where the fine is calculated from the date of the regular date of submission of the declaration and payment. Based on the foregoing, and by reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the decision of the Circuit in the previous clause has led to the partial acceptance of the Authority's appeal and the amendment of the decision

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:





### Decision:

1- Accepting the appeal procedurally from the appellant/Zakat, Tax and Customs Authority, against the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh with number (ISR-2022-1855) issued in Case No. (W-2021-69654) regarding the withholding tax for the month of December 2018 AD.

2- On the merits:

- a. Accepting the Authority's appeal in part and amending the decision of the Adjudication Circuit regarding the (withholding tax) clause.
- b. Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the (delay fine) clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-176717

Case No. W-2023-176717

### Keywords

Withholding Tax - Management Fees - Partial Acceptance of the Authority's Appeal

### Summary:

the Taxpayer and the Zakat, Tax and Customs Authority objected to the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Dammam City (IZD-2022-2613) regarding the withholding tax for the years 2015 AD to 2017 AD. the Authority's appeal lies in the clause "Management Fees for the years 2015 AD to 2017 AD" on the incorrect classification of the amounts paid as management fees, as the Authority considered these payments subject to 20% withholding tax instead of 15%, and where it was proven to the Appellate Committee that the Authority requested the Taxpayer to describe and detail the services, but the Taxpayer did not provide documents that clarify the nature of the service that merited these fees. Consequently: accepting the Authority's appeal in part.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (68) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Article (70) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)

### Facts:

the appeal filed on 08/02/2023 AD, from/... Identity number (...) In its capacity as agent for the Plaintiff company under the power of attorney No. (...) And the lawyer's license No. (...), and from/the Zakat, Tax and Customs Authority, on the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2613) issued in Case No. (W-2021-82249) related to the assessment of withholding tax for the years from 2015 AD to 2017 AD, in the lawsuit filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

- 1-Cancel the Defendant's decision regarding the management fees clause for the years from 2015 AD to 2017 AD.
- 2-Proof of the end of the dispute regarding the clause of amounts paid to related parties classified among the other payments for the year 2015 AD.
- 3-Cancel the Defendant's decision regarding the clause of amounts paid to related parties classified among the other payments for 2016 AD.
- 4- Rejection of the Plaintiff's objection regarding an clause of amounts paid to related parties classified among the other payments for 2017 AD.
- 5- Proof of the end of the dispute regarding the clause of network fees for the years from 2015 AD to 2017 AD.
- 6-Cancellation of the Defendant's decision with regard to an clause of amounts paid in accordance with the bond notices for the years from 2015 AD to 2017 AD.
7. Amendment of the Defendant's decision regarding the delay fine clause.
- 8-Proof of the end of the dispute regarding the clause of the difference in the fees of the management support tax and network fees for which the withholding tax must be paid for the years from 2015 AD to 2017 AD.
- 9- Proof of the end of the dispute regarding the clause of withholding tax related to consultancy services paid to related parties for the years 2015 AD and 2016 AD
- 10- Proof of the end of the dispute regarding the clause of withholding tax on the difference in dividends for the year 2016 AD.

This decision was not acceptable to the Taxpayer (...Company), so it filed a list of appeals, which was reviewed by the Circuit and stated that the Taxpayer requests the acceptance of its appeal and the annulment of the decision of the adjudication circuit. This decision was also not accepted by the Appellant (Zakat, Tax and Customs Authority), so it submitted an appeal regulation that was reviewed by the Circuit, where the Authority's appeal lies on the clause (management fees for the years from 2015 AD to 2017 AD). The Authority clarifies that it has subjected the amounts paid for support services paid to related parties to a withholding tax of (20%) instead of (15%), as detailed in the Authority's appeal regulation. With regard to the management fees, the Authority reports the reclassification of the amounts of support services (royalty) subject to withholding by (15%) from the Taxpayer's point of view, to management fees subject to (20%) by assessment ing, because it did not clarify the nature of the service paid for these amounts in detail. He also did not provide supporting documents to indicate whether these services are like the royalty that is subject to withholding by (15%) or like the administration that is subject to (20%), and with regard to the

Taxpayer's request not to calculate a withholding tax of (20%) on the amounts of tax it asks that its appeal be accepted and that the decision of the Adjudication Circuit be reversed.

on Monday, 03/06/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No. (25711) and dated: 08 /04 /1445 AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and with regard to the Authority's appeal on the clause (management fees for the years from 2015 AD to 2017 AD), and where the Authority's appeal lies in subjecting the amounts paid for support services paid to related parties to a withholding tax of (20%) instead of (15%), and based on Article (68) of the Income Tax Law on Tax Withholding: "A. Every resident, whether Taxpayer or non-Taxpayer under this Law, and the permanent establishment in the Kingdom of a non-resident, who pays an amount to a non-resident from a source in the Kingdom must withhold tax from the amount paid in accordance with the following rates: - 1 - Rent....5% - 2 - Royalties or royalties.....15% - 3 - Management fees.... 20% - 4 - Payments for airline tickets, air or sea freight.... %5 - 5 - Payments for International Telecommunications Services .... %5 - 6 - Any other payments specified by the regulations, provided that the tax rate shall not exceed 15% in the case of amounts paid by a natural person and the withholding conditions required by this Article shall apply to the activity-specific payments of this person."According to the above, it is clear to the Circuit that the dispute is that the Authority considers management support services to be management fee services and imposes a withholding tax of (20%) instead of (15%), which the Taxpayer argues are royalty services, according to its view before the adjudication committee and before the Authority and confirms that it pays the tax and that these amounts according to the agreement concluded between the company and the subsidiaries (Annex 4) are support services and network fees the Circuit reviewed the Authority's Supplementary Appeal Regulation, in which it stated that it does not accept the Taxpayer's argument that they are support services because it did not provide an explanation of the nature of the service for which the amounts were paid in detail and did not provide supporting documents to indicate whether the services

were royalty or management fees, and the Circuit reviewed the case and the documents and defenses contained therein and found that the Authority requested from the Taxpayer a statement of the services and their details, which it turns out that the Taxpayer did not provide them, but only submitted the concession agreement and did not provide the management fee agreement to which the Authority referred, which is clear from the financial statements and images attached to the Authority's appeal list that there are management fees, as well as the management services provided by several parties, and the Authority provided a copy of an Excel spreadsheet explaining the management services. 2015 AD (9,795,171) SAR, 2016 AD (14,495,44) SAR, 2017 AD (16,422,335) SAR.

With regard to the Authority's appeal on an clause (paid to related parties classified among the other payments for 2016 AD), and an clause (amounts paid in accordance with the bond notices for the years from 2015 AD to 2017 AD), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement is reached before the case is formally recorded, it is necessary to document the substance of the case and the response before recording the agreement, taking into consideration that the original case must fall within the jurisdiction of the Circuit, even if the content of the agreement falls within the jurisdiction of another court or circuit, provided that the subject matter of the case or part of it is among what has been agreed upon." Based on the foregoing, and whereas it has been established to this Circuit that the Authority has requested to abandon the appeal in accordance with what was stated in the letter issued by it in the supplementary memorandum, which contained: "The Authority informs the respected Circuit that after conducting a study, it has been determined that the amount related to this specific clause, which is 2,828,681 riyals, was included in error and there is no regulatory basis for subjecting it [to tax]. Accordingly, the Authority informs Your Excellency of its abandonment of its appeal regarding the above-mentioned clause specifically and any procedures that resulted from the Authority's appeal, in accordance with what the Adjudication Circuit's decision concluded in its reasoning." therefore, the Circuit shall accept the abandonment of the litigation.

With regard to the Authority's appeal on the clause (amounts paid in accordance with the bond notices for the years from 2015 AD to 2017 AD), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement is reached before the case is formally recorded, it is necessary to

document the substance of the case and the response before recording the agreement, taking into consideration that the original case must fall within the jurisdiction of the Circuit, even if the content of the agreement falls within the jurisdiction of another court or circuit, provided that the subject matter of the case or part of it is among what has been agreed upon." Based on the foregoing, and whereas it has been established to this Circuit that the Authority has requested to abandon the appeal in accordance with what was stated in the letter issued by it in the supplementary memorandum, which contained: "The Authority has accepted the Taxpayer's objection to amend the withholding forms submitted by the Taxpayer through the Authority's system, given that the Taxpayer paid the withholding tax dues based on the forms submitted to the Authority through the Authority's electronic system, and consequently their impact on the value of penalties resulting from late payment." therefore, the Circuit shall accept the abandonment of the litigation.

with regard to the Taxpayer's and the Authority's appeal on the remaining clauses, the Circuit has no fault in adopting the grounds for the decision under appeal without adding to them when it assesses that these grounds make it unnecessary to introduce anything new, because in supporting them with the content of these grounds, it is certain that it did not find any objections to the decision that merit a response beyond what is contained in these grounds as the issuing Circuit scrutinized the dispute and reached the conclusion it reached in its operative part, and as this Circuit did not observe any reason to appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject the appeal of the Taxpayer and the Authority and uphold the decision of the Adjudication Circuit in its conclusion on the remaining clauses, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Acceptance of the appeal procedurally, submitted by / ... Company Ltd, Commercial Registration No. (...), unique number (...), and the Zakat, Tax and Customs Authority, against the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Dammam City (IZD-2022-2613) issued in Case No. (W-2021-82249) regarding the withholding tax for the years 2015 AD to 2017 AD.

2- On the merits:

- a. Accepting the Authority's appeal in part and amending the decision of the Adjudication Circuit regarding the clause (management fees for the years 2015 AD to 2017 AD).
- b. Accepting the abandonment of the dispute regarding the Authority's appeal on the clause (Payments to related parties categorized within other payments for 2016 AD).
- c. Accepting the abandonment of litigation regarding the Authority's appeal on the clause (amounts paid according to the profit notices for the years 2015 AD to 2017 AD).



- d. Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (amounts paid to related parties classified as other payments for 2017 AD).
- e. Rejecting the parties' appeal and upholding the decision of the Adjudication Circuit with regard to the delay fine clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-173976

Case No. W-2023-173976

### Keywords

Withholding Tax - Withholding Tax on Dividends - Accepting the Authority's Appeal

### Summary:

the Zakat, Tax and Customs Authority's objection to the decision of the first Circuit for adjudicating income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2599), related to assessment ing the withholding tax for the years 2017 AD to 2019 AD. the Authority's appeal lies on the clause (withholding tax on dividends), explaining that the Taxpayer did not provide sufficient documents to prove the residency of the foreign partners and asserts that the lease contracts provided are incomplete and do not apply to the years of the dispute and that the Taxpayer did not provide proof of residency through the entry and exit portal of the Kingdom from the Passport Circuit. and on the (delay fine) clause on unpaid tax differences. the Appellate Committee found that the Taxpayer did not submit the necessary documents to prove the residence of the foreign partners in accordance with the applicable regulations, as the leases submitted were not applicable to the years in dispute. it was also found that the Taxpayer did not provide proof of its presence in the Kingdom as required by the stipulated residency requirements. Consequently: accepting the Authority's appeal and canceling the initial decision

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (a,b) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (3) of Article (67) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)
- Paragraph (1) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)





- Paragraph (2) of Article (71) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)

### Facts:



The appeal filed on 31/01/2023 AD by the Zakat, Tax and Customs Authority against the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2599) issued in Case No. (W-2021-78374) related to the assessment of withholding tax for the years from 2017 AD to 2019 AD was considered in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit stipulated the following:

First: Modify the Defendant's action on the clause of withholding tax on profits distributed for the years from 2017 to 2019, in accordance with the grounds for the decision.

Second: Modify the Defendant's action on the delay fine clause; according to the merits of the decision.

as this decision was not accepted by the appellant (Zakat, Tax and Customs Authority), it filed a list of appeals, which included the following:

The Authority objects to the decision of the Appealed Adjudication Circuit, it claims that with regard to the clause (withholding tax on distributed profits), the Authority clarifies that the Taxpayer did not provide proof of residence to the foreign partners, as it provided a copy of the residence permit and a copy of the passports to the partners and a lease contract to the partner ... The date is 19/04/2021 AD and the partner ... Dated 1/12/2012 AD and starting on 1/12/2014 AD for a period of five years and that those documents submitted are incomplete and do not apply to the years of disagreement as the lease contracts are not during the years of disagreement, and with regard to the clause (delay fine), the Authority states that it imposed a delay fine on the unpaid tax differences. (...), the Authority requests that the decision of the Adjudication Circuit on the clauses under appeal be overturned for the above grounds.

on Monday, 01/04/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via videoconferencing in accordance with the procedures for remote videoconferencing; based on the provisions of clause no:(2) of Article Fifteen of the Rules of Work of the Committees for Adjudicating Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441 AH; after reviewing the appeal submitted by the parties to the case, and after examining the contents of the case file, and where the circuit found nothing to require the presence of the parties to the appeal, the circuit decided that the case has become ready for adjudication and issuing a decision on its subject, so the circuit decided to close the pleadings and reserve the case for adjudication.

## Grounds:



upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request is accepted procedurally, as it was submitted by a person with standing, and within the statutory period prescribed for its conduct.

On the merits, and as for the Authority's appeal on the clauses in question, with regard to the Authority's appeal on the clause (withholding tax on distributed profits), and based on Article 3 of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates: "1- A natural person is considered a resident of the Kingdom during the tax year, if it has a permanent residence in the Kingdom, and is present in the Kingdom for a total of not less than thirty continuous or separate days during the tax year. a natural person is also considered a resident of the Kingdom when it is present in the Kingdom for at least one hundred and eighty-three consecutive or separate days, even if it does not have a permanent residence in the Kingdom. 2- Permanent residence means the residence owned by the natural person, or rented with lease contracts during the tax year for a total of not less than one year, or the residence secured for the natural person from any other entity during the tax year for a period of not less than one year. 3- A person's nationality is not taken into account to determine its place of residence, as a natural or legal person is considered non-resident in the Kingdom if it does not meet the residency conditions specified in the law and these regulations, regardless of its nationality." based on the above, it is clear that the dispute is centered on the extent to which the withholding tax is subject to the dividend, as the Taxpayer asserts that the partners are residents and have fulfilled the residency conditions stipulated in Article 3 referred to above, while the Authority asserts that the lease contracts submitted are incomplete and do not apply to the years in dispute, and also clarifies that the Taxpayer has not provided proof of residency through the entry and exit protocol for the Kingdom from the Passport Circuit, and referring to the text of Article 3 referred to above, it is clear to us that one of the conditions for residence if a permanent residence in the Kingdom is to be in the Kingdom for a total of not less than thirty days, continuous or separate it starts on 1/12/2024 AD and the partner (...) On 19/04/2021 AD, as it does not apply to the years of the dispute, and the Taxpayer did not initially submit its response to the Authority's appeal, which was requested of him, nor did it provide proof of the partners' presence in the Kingdom in accordance with the text of the above article in case they have a permanent residence in the Kingdom, and therefore, since the documents submitted are not sufficient to prove the validity of the Taxpayer's point of view and the burden of proof falls on the Taxpayer, which means that the Circuit shall accept the Authority's appeal and cancel the decision of the Adjudication Circuit regarding the clause (withholding tax on dividends).

Whereas, regarding the Authority's appeal on the clause (delay fine), and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes delays in paying the tax required for withholding and accelerated payments, calculated from the date the tax is due to the date of payment." Having reviewed paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these regulations, including cases that are contested, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on the foregoing, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the dispute between the two parties is a documentary dispute, and did not result in a significant difference in the interpretation of the statutory texts, which must be with the Circuit to accept the Authority's appeal and cancel the decision of the Adjudication Circuit regarding the clause (delay fine).

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Accepting the appeal procedurally from the applicant/Zakat, Tax and Customs Authority, against the decision of the First Circuit for Settling Income Tax Violations and Disputes in Jeddah Governorate No. (IZJ)-2022-2599) issued in Case No. (W-2021-78374) related to assessment ing the withholding tax for the years 2017 AD to 2019 AD.

2- On the merits:

a. Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause (withholding tax on dividends).

b- Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the (delay fine) clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-191783

Case No. W-2023-191783

### Keywords

Withholding tax - Withholding tax on airline tickets or sea freight - Acceptance of the Authority's appeal

### Summary:

the Zakat, Tax and Customs Authority's objection to the decision of the Third Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (ITR-2023-92248) regarding the tax assessment of the withholding tax for December 2016 AD. the Authority's appeal lies on the clause (withholding tax on airline tickets or sea freight) for the month of December 2016 AD, noting that the Taxpayer did not submit the international convention application forms according to the approved forms in the examination and objection stages to avoid double taxation. with regard to the delay fine, the Authority requests confirmation of the validity of its imposition based on Article (77) of the Law, considering that the decision to cancel the imposition of the penalty is contrary to previous judicial rulings on this issue. the Appellate Committee found that the Taxpayer did not submit the necessary documents. it was pointed out that the Authority's appeal is based on a valid legal basis in terms of submitting the necessary forms and the accrual of fines. The consequence of this; accepting the Authority's appeal.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (a) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (1) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)

### Facts:

The appeal filed on 09/04/2023 AD by the Zakat, Tax and Customs Authority against the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ITR-2023-92248)



issued in Case No. (W-2022-92248) related to the tax assessment of withholding tax for the month of December 2016 AD was considered in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit stipulated the following:

Acceptance of the Plaintiff's objection/ ... company Travel & Tourism (CR No ...) On the Defendant's/ ZATCA's decision procedurally terms, and objectively to cancel the Defendant's decision.

as this decision was not accepted by the appellant (Zakat, Tax and Customs Authority), it filed a list of appeals, which included the following:

The Authority objects to the decision of the Adjudication Circuit in question. It claims that with regard to the clause (withholding tax on airline tickets or sea freight for the month of December 2016 AD), the Authority clarifies that it has imposed a withholding tax of (5%) on the amounts paid to the ... company In exchange for airline tickets, as the Taxpayer did not supply the tax on these amounts previously, and reported that through the documents submitted by the Taxpayer (the tax exemption agreement on the income realized from the international operation of ships and aircraft in addition to the agreement between the Taxpayer and the ... company) It was found that the Taxpayer did not comply with the application forms of the international agreement in accordance with the forms of the Authority (Form 7 (b) and (c)) in the examination and objection stages in addition to the failure to provide details of these amounts, and therefore the Taxpayer's objection was rejected based on Article (5) Paragraph (8), which states: "Income shall be deemed to be derived from a source in the Kingdom in any of the following cases, including amounts paid by a resident for services performed in whole or in part in the Kingdom." Article (68), paragraph (a), which stipulates: " Every resident, whether expensive or not, under this Law, and the permanent establishment in the Kingdom of a non-resident, and the natural person, who pays an amount to a non-resident from a source in the Kingdom, shall deduct a tax from the amount paid in accordance with the following prices, including payments for airline tickets at a rate of 5%", and Article (63) Paragraph (a) of the Executive Regulations of the Tax Law, which stipulates: "A non-resident shall be subject to tax on any amount obtained from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following prices, including payments for airline tickets at a rate of 5%", and Article (57), paragraph (3), which states: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." With regard to the Authority's appeal on the clause (delay fine), the Authority clarified that the delay fine was imposed on the unpaid tax differences on the regular date based on Article No. (77), Paragraph (A) of the Income Tax Law, which stipulates: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which

includes the delay in paying the tax required for withholding and accelerated payments and is calculated from the date the tax is due to the date of payment", as well as based on paragraph (1/b) of Article 68 of the Executive Regulations of the Income Tax Law, which states: "The fines mentioned in the previous article shall be added (1%) of the unpaid tax for every thirty days of delay in the following cases, including the following: - (b) Delay in the payment of the tax due under the assessment of the Authority), which shall be calculated after the statutory date of submission of the declaration and not from the date of the assessment. The Authority's action was supported by Appeal Decision No. (1774) of 1438 AH. The Authority's action was also supported by the final judgment issued in Case No. (5245/1/S) of 1438 AH issued by the Nineteenth Administrative Circuit of the Administrative Court in Riyadh and supported by the Second Administrative Circuit of the Administrative Court of Appeal in Riyadh by Judgement No. (3404/S) of 1439 AH, which included the grounds for the judgment as follows: (With regard to the delay fine of (1%) on the output of the previous amendments, and where paragraph (a) of Article (77) of the Income Tax Law stipulates: (a) In addition to the fines mentioned in Article 76 of this Law and in paragraph (b) of this Article , the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay , and this includes the delay in paying the tax required to be withheld and the accelerated payments, calculated from the date the tax is due to the date of payment) and with reference to paragraph (b) of Clause (1) of Article (68) of the same Law, which stipulates: (In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: (B- Delay in paying the tax due under the assessment ing of the interest ). The text in this regard is clear and explicit , and since the original is the validity of the administrative decision, and the Plaintiff has not denied this , the original remains what it was, so the Circuit ruled to reject the lawsuit ), so the Authority adheres to the validity of its action, and the Authority's action has been supported by several appeal decisions, including: Appellate Decision No. (1913) of 1439 AH, where the grounds for the decision included the following: (.. Upon the Committee's review of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH, it became evident that paragraph (a) of Article (77) stipulates: "In addition to the penalties mentioned in Article seventy-six of this Law and in paragraph (b) of this Article, the Taxpayer must pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay. This includes delays in paying withholding tax and advance payments, calculated from the tax due date to the payment date." In application of the aforementioned regulatory text, the Committee determines the imposition of a delay fine on the capital gains tax difference from the tax due date to the payment date. Accordingly, the Committee rejects the Taxpayer's appeal requesting that delay penalties not be calculated for capital gains tax payment. Similarly, Appeal Decision No. (1925) for the year 1439 AH establishes that it is settled and known to all Taxpayers, according to previous appellate committee jurisprudence, that delay penalties are imposed from the due date as clearly and explicitly stated in the regulatory articles. Therefore, the decision of the Circuit under appeal has contradicted what was established by previous appellate committee jurisprudence without any regulatory basis for the disputed clauses that it ruled to cancel. Thus, the Authority maintains the correctness

and validity of its procedures according to regulatory requirements. The decision of the First Adjudication Circuit in Riyadh under appeal has indeed contradicted what was established by the jurisprudence of the First Appellate Circuit for adjudicating income tax violations and disputes, according to Appeal Decision No. (IR-2020-28) in Case No. (ZIW-2018-1657), which included in its decision rationale: "Whereas it is established that the penalty is due from the tax due date until the payment date, and whereas the nature of the dispute between the parties is documentary in the disputed clauses and did not result in a considerable disagreement in interpreting the regulatory texts, and whereas the tax due date is the date of knowledge thereof or presumed knowledge thereof, so knowledge is presumed from its due date, accordingly the Circuit determines the correctness of imposing penalties on the clauses for which the appeal was rejected from the regulatory tax due date." Since these clauses, from the Authority's perspective, are correct and remain valid and their basis has not fallen, on what regulatory grounds did the Circuit contradict established practice, which renders the Circuit's conclusion contrary to regulatory requirements. The Authority thus confirms the correctness and validity of its procedures. Accordingly, the Authority requests the annulment of the First Adjudication Circuit's decision regarding the clauses under appeal for the aforementioned grounds.

on Sunday, on: 07/07/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are written in the minutes, via video communication in accordance with the procedures of remote video litigation; based on the provisions of clause (1) of Article 15 of the working rules of zakat, tax and customs committees issued by Royal Decree No: (25711) and dated: 08 /04 /1445 AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request is accepted procedurally, as it was submitted by a person with standing, and within the statutory period prescribed for its conduct.

On the merits, and as for the Authority's appeal regarding the clause (withholding tax on air tickets or sea freight for the month of December 2016 AD), and where the Authority's appeal lies in objecting to the decision of the Adjudication Circuit regarding this clause, as it claims that the Taxpayer is not committed to submitting the application forms of the international agreement in accordance with the Authority's forms (Form 7 (b) and (c)) in the examination and objection stages. Based on paragraph (1) and paragraph (2) of the Convention on income from the international operation of ships and aircraft between the Kingdom and

the United States of America, which states: "1. This Agreement shall apply to all taxes levied by either Contracting Party on income derived from the international operation of ships or aircraft irrespective of the manner in which such taxes are levied. 2- Taxes on income from the international operation of ships or aircraft shall be deemed all taxes imposed on the total of such income or on any of its elements", and based on paragraph (1) of Article (3) of the Convention on income from the international operation of ships and aircraft between the Kingdom and the United States of America, which stipulates: "Income from the international operation of ships or aircraft that is carried out by a company established in one of the contracting parties and operating in the international operation of ships or aircraft shall be exempt from tax on this income by the other contracting party," according to the circular issued by the Zakat, Tax and Customs Authority No. (5068/16/1434) dated 30/07/1434 AH, which includes the requirements for benefiting from the tax benefits contained in the provisions for the avoidance of double taxation, which reads as follows: "The resident entity (the withholding entity) shall have the right to withhold the tax and supply it to the authority in accordance with the prices specified in the applicable double taxation avoidance agreements, provided that the withholding entity complies with the following: Submitting the application form for the application of the agreement, including a residence certificate from the tax authority of the beneficiary according to Form No. (Q7/B) certified by the competent tax authority in the country of residence of the beneficiary stating that it is a resident in accordance with the provisions of Article IV of the Convention on the Avoidance of Double Taxation and is subject to tax in it, and submitting a declaration and commitment to bear and pay any tax amounts or fines owed by the non-resident beneficiary as a result of the incorrect information provided, a mathematical error or a misunderstanding in the interpretation of the provisions of the Agreement for the Avoidance of Double Taxation between the Kingdom and the other Contracting State in accordance with Form No. (Q7/C). it is clear from the statutory texts that the imposition of withholding tax on amounts paid to non-resident entities is based on the actual payment or its equivalent, such as settlements, set-off or any other means, and since the dispute lies in the Authority's procedure for imposing withholding tax on amounts paid to non-resident entities (airline tickets), and by reviewing the documents submitted in the case file, it appears that the Taxpayer submitted the agreement between him and ... company in Arabic, according to paragraph (4), the amounts are transferred directly to the airline., and the Taxpayer submitted the agreement on the income realized from the international operation of ships and aircraft between Saudi Arabia and the United States of America, and the Taxpayer submitted the residency certificate of ... one of the requirements of Form 7(b) is that the embassy of the Kingdom of Saudi Arabia in the non-resident's country of residence must be authenticated in accordance with the above-mentioned CRA circular, resulting in the Circuit's decision to accept CRA's appeal and annul the decision of the Adjudication Circuit regarding this clause.

Regarding the Authority's appeal regarding the clause (delay fine), and based on paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article,





the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." Based on the foregoing, and by reference to the case file and the defenses and documents contained therein, and since the Authority's appeal was accepted in the first clause, the Circuit concludes with the acceptance of the Authority's appeal and the amendment of the decision of the Circuit of Cassation on this clause.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Accepting the appeal procedurally from the applicant/Zakat, Tax and Customs Authority, against the decision of the Third Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh, No. (ITR-2023-92248) issued in Case No. (W-2022-92248) related to the withholding tax assessment for the month of December 2016 AD.

2- On the merits:

a- Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause (withholding tax on airline tickets or sea freight for December 2016 AD).

b- Accepting the Authority's appeal and amending the decision of the Adjudication Circuit with regard to the delay fine clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-174941

Case No. W-2023-174941

Keywords

Withholding Tax - Withholding Tax on Assumed Dividends - Acceptance of Taxpayer's Appeal

Summary:

the Taxpayer's objection to the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (ISR-2022-1930), regarding the establishment of a withholding tax on employee salaries and assumed dividends, where the Taxpayer's appeal is based on the fact that the tax on employee salaries was calculated in an inaccurate manner, and regarding its objection to the imposition of a tax on profits, where it explained that the Authority indicated that the branch's general profits are settled in the main center account and these settlements are considered as payments, as the Authority based its viewpoint on the main center account movement provided by the Taxpayer without recourse to definitive evidence for the occurrence of the fact of the Taxpayer. the Appeals Circuit found that the Taxpayer submitted some documents in support of its appeal regarding the withholding tax on salaries, and the Circuit found that the Authority's action to impose the withholding tax on discretionary dividends resulted from the assumption that the branch's profits were closed in the main center's account. This means accepting the Taxpayer's appeal.

Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (1) of Article (63, 68) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425 AH](#)
- Paragraph (3) of Article (67) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425 AH](#)
- Paragraph (1) of Article (71) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425 AH](#)

## Facts:



The submitted appeal was heard on: 02/02/2023 AD, from/ branch of a ... company Commercial Register (...), on the decision of the Second Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ISR-2022-1930) issued in Case No. (W-2021-87544) related to its objection to withholding tax for the months of September 2014 AD December 2015 AD December 2017 AD December 2018 AD December 2019 AD December 2020 AD, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

Acceptance of the lawsuit filed by the Plaintiff/ branch of a ... company , Commercial Registration No. (...), against the Defendant/Zakat, Tax and Customs Authority procedurally and subject to rejection.

Whereas this decision was not accepted by the Taxpayer (branch of a ... company ), submitted a list of appeals that included the following:

The Taxpayer objects to the decision of the Adjudication Circuit in question, it claims that with regard to the clause (withholding tax on employees' salaries), as the appellant (the Taxpayer) demands the cancellation of the circuit's decision on this clause, as it indicated that the authority assumed that the amounts paid to these employees are for services performed by the head office by the visiting employees. The absence of a provision in the employment contract stipulating the transfer of employees' salaries to their accounts outside the Kingdom is without prejudice to the fact that the amounts transferred to them are salaries, and this is in no way a presumption that these employees are considered visitors from the head office. As for the period in which these employees are in the Kingdom during the year, this is due to the nature of the Taxpayer's activity, as the Taxpayer is basically a branch established for the purpose of implementing a specific project under a temporary investment license issued by the Ministry of Investment, even if the employees' contracts do not stipulate the transfer of their salaries to their accounts outside the Kingdom, this does not give the Authority the right to impose a withholding tax on them only because they were paid by transferring their salaries to their accounts outside the Kingdom. In addition, the Taxpayer records the salaries of the employees in full as actual salary expenses in its accounts and audited financial statements approved by a certified chartered accountant in the Kingdom, while the Appellee's response (the Authority) stated that the Authority imposed a withholding tax of 15% on the salaries of visiting employees from the head office, and the Authority clarifies the details of the calculation as follows (attached). Since the Plaintiff stated during the objection period that the employees are not registered because they are coming to the Kingdom on visitor visas, and there was no provision in the employment contract for transferring salaries to their accounts outside the Kingdom, and that the work duration varies according to the company's projects but ranges between 3 to 6 months, according to the mentioned circumstances, it is clear that these are services performed by the head office through visiting employees. It is also clear that these employees provide technical and consulting services during a certain period of the year and are not permanently

present within the Kingdom. The clause (withholding tax on deemed dividend distributions), where the appellant (Taxpayer) demands the cancellation of the Circuit's decision regarding this clause, where he clarified that the Authority indicated that the branch's annual profits are settled in the head office account and these settlements are considered as payments. The Authority based its viewpoint on the movement of the head office account provided by the Taxpayer without resorting to conclusive evidence of the occurrence of payment or settlement. There is no process of transferring or settling profits in the head office account, as shown in the statement of changes in equity from the audited financial statements of the branch for the years subject to assessment, which were previously submitted to the Authority with the original objection memorandum. As is clear from these financial statements, there are no dividends distributed or closed in the head office account, as is clearly evident without interpretation from the movement of retained earnings. It is also clear to Your Excellency through the statement of cash flows that there are no profits distributed during the years subject to the assessment, and therefore the Authority's assumption does not reflect the reality of the situation in any way. The Authority indicated that the fate of these profits will be for the head office, and this is normal, of course, as the profits carried forward will be destined to the owners, but this is not a presumption nor a reason for subjecting them to withholding tax before payment or conducting an operation in the form of payment (such as clearing or settlement), so it is clear to Your Excellency that even if these profits belong to the head office, the actual payment (or the equivalent of payment) must occur in order for the withholding tax to be due on the distribution of those profits.

While it was stated in the Appellee's response (the Authority), the Authority subjected the profits to withholding tax at a rate of (5%), as it became clear through the master's account of the head office that the profits of the year were closed in it, and the Authority clarifies the details of the calculation as follows (attached). Whereas the Plaintiff stated that there are no profits distributed to the head office, and by looking at the account of the head office, which the Plaintiff previously submitted to the Authority during the examination, it is clear that the profits of the year are settled in the account of the head office, and these settlements are considered payments, and the branch is owned by the head office, in addition to the fact that the fate of these profits will be for the head office.

The clause (delay fine), as the appellant (the Taxpayer) claims to cancel the decision of the Circuit on this clause, as it explained that the Authority imposed a delay fine on the tax difference resulting from clauses that are themselves under this objection. The delay fine arose due to a real and clear difference in views between the Authority and the branch. The objection committees have ruled in many objections not to impose a delay fine when there is a real difference in views between the Authority and the Taxpayer.

Whereas, in the response of the Appellee (the Authority), it was stated that the Authority imposed a delay fine on the unpaid tax differences on the regular date based on paragraph (a) of Article (77) of the Income Tax Law.

on Thursday, 09/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No: (25711) and dated: 08 /04 /1445 AH; after reviewing the appeal request, the pleadings submitted, and the papers and documents contained in the case file, and at this session, the circuit reviewed the request for postponement attached to the case file by the Authority. accordingly, the Circuit decided to accept the request and grant the Authority a period of five working days ending on Thursday, 16/05/2024 AD, and to grant the Taxpayer a subsequent period of five working days ending on Thursday, 23/05/2024 AD, after which the written pleadings will be closed and the case will be submitted for deliberation and decision based on the documents contained in the case file, and the Circuit will not accept any new documents or memoranda submitted after the aforementioned date.

on Wednesday, 01/06/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members, whose names are recorded in the minutes, through video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No.: (25711) and dated: 08/04/1445 AH; after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and as for the Taxpayer's appeal regarding the clause (withholding tax on employees' salaries), and based on paragraph No. (1) of Article (63) of the Executive Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/6/1425 AH and amended by Ministerial Resolution No. (1/1748) dated 20/2/1427 AH, on: "1- A non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates: Payments for technical or consulting services or international telephone communication services paid to the head office or an associated company..... 15% ", and based on Circular No. (8922/9/1438) dated 3/1/1438 AH, paragraph No. (2) of which stipulates that salaries and wages are not

subject to withholding tax if the controls of considering the contract an employment contract are met, as the paragraph stipulates: "2. Or in return for a work wage resulting from an employment relationship for specific work contracts (whether the contract is for a period of one year or less). This income is not taxable in the Kingdom as salaries and wages. The contract shall be classified as an employment contract if it meets the following controls: - The authority of the employer to monitor the manner and performance of the work. - Determining the working hours and monitoring its times and schedules by the employer. - Determining the place of performance of the service by the employer. - Identify work tools and other relevant facilities. - Receive work-related guidance from the employer. - Paying their fees and wages on specific dates, "according to the above, and where it becomes clear that the Taxpayer's appeal lies in canceling the imposition of withholding tax on the salaries of visiting employees from the headquarters. The Taxpayer explained that these employees are not visitors from the headquarters. By reviewing the case file and the documents submitted, it is clear that although the Taxpayer did not submit the documents mentioned in Circular No. (8922/9/1438) dated 03/01/1438 AH referred to, the Authority's defenses were limited to the fact that there was no provision in the employment contract for the transfer of salaries to their accounts outside the Kingdom, and that the period of work varies according to the company's projects, but it ranges from 3 to 6 months, that is, its defenses did not include the controls contained in Circular No. (8922/9/1438) dated 03/01/1438 AH, which requires the Circuit to accept the costly appeal and cancel the decision of the circuit regarding the withholding tax on employees' salaries.

Whereas, regarding the Taxpayer's appeal regarding the clause (withholding tax on supposed dividends), and based on Article (63) Paragraph (1) of the Executive Regulations of the Income Tax Law on: "A non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates: 5% dividend payout ratio', based on the above, and where it is clear from the statutory provisions that the imposition of withholding tax is assessment ed to the payment process and its equivalent such as reconciliation between accounts and clearing, and where the Authority's action to impose withholding tax on discretionary dividends results from the assumption that the branch's profits are closed in the main center's account, as it is statutory that the withholding tax is due and consequent to the occurrence of the payment event. since the Authority did not provide proof of the fact of payment, the Circuit shall accept the appeal regarding the withholding tax on supposed dividend distributions and overturn the Circuit's decision.

Whereas, regarding the Taxpayer's appeal regarding the clause (delay fine), and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the

Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425H, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law: "Unpaid tax means the difference between what the Taxpayer paid on the statutory date, and the tax payable under the provisions of the Law, including the amendments made by the Authority that have become final as stated in paragraph (2) of Article Seventy-one of these Regulations, including the objected cases where the fine is calculated from the date of the statutory date of submission of the declaration and payment", based on the foregoing, and by reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the date of the end of the deadline for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Defendant, and since the dispute between the parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the statutory texts, which requires the Circuit to accept the costly appeal and cancel the decision of the circuit on the delay fine, by dropping the delay fine on the clauses that are

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Accepting the appeal procedurally of the Taxpayer's ... Commercial registration (...), unique number (...) against the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (ISR-2022-1930) issued in Case No. (W-2021-87544) regarding its objection to the withholding tax for the months of September 2014 AD December 2015 AD December 2017 AD December 2018 AD December 2019 AD December 2020 AD.

2- On the merits:

a- Accepting the costly appeal and canceling the decision of the Adjudication Circuit regarding the withholding tax on employees' salaries.

b - Accepting the costly appeal and canceling the decision of the Adjudication Circuit regarding the withholding tax on supposed dividend distributions.

c- Accepting the costly appeal and canceling the decision of the Adjudication Circuit regarding the delay fine.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-176207

Case No. W-2023-176207

Keywords

Withholding Tax - Withholding Tax on Foreign Remittances - Partial Acceptance of Taxpayer's Appeal

Summary:

the Taxpayer's objection to the decision of the first circuit for adjudicating income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2710) regarding the withholding tax for the month of June 2016 AD. the Taxpayer's appeal (withholding tax on foreign remittances) is based on the Circuit's rejection of its objection regarding the disputed clause, as it claims that the remittances are not from its party and are not in its bank accounts, as the Authority calculated a withholding tax on (26,749,608.53) and claimed that it is the total amount of foreign remittances, while the company's real remittances amounted to only (1,126,096.00). he also objected to the calculation of a late penalty on the alleged amounts. the Appeals Circuit found that the documents submitted during the appeal do not match the documents previously submitted, and some of the transactions described in the analysis provided do not appear, resulting in the partial acceptance of the Taxpayer's appeal.

Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraphs (a) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraphs (1,8) of Article (63) of [The Executive Regulations of the Income Tax Law issued by the Minister of Finance Decision No. \(1535\) dated 11/06/1425 A.H](#)
- Paragraph (3) of Article (67) of [The Executive Regulations of the Income Tax Law issued by the Minister of Finance Decision No. \(1535\) dated 11/06/1425 A.H](#)
- Paragraph (2) of Article (71) of [The Executive Regulations of the Income Tax Law issued by the Minister of Finance Decision No. \(1535\) dated 11/06/1425 A.H](#)



## Facts:



The submitted appeal was heard on: 06/02/2023 AD, from/ ... , National ID No. (...), in its capacity as an agent for ... National ID number (...) Being the legal representative of the Appellant Company under its Memorandum of Association, under Power of Attorney No. (...) And the lawyer's license No. (...), on the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZ)-2022-2710) issued in Case No. (W-2021-60917) related to the withholding tax assessment for the month of June of 2016 AD, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

First: The Plaintiff's objection to the clause of withholding taxes on external transfers was rejected.

Secondly: The Plaintiff's objection to the delay fine clause was rejected.

since this decision was not accepted by the Taxpayer (a ... company for contracting), so he submitted an appeal brief which the Circuit reviewed, and it included that regarding the clause (withholding taxes on foreign remittances for the year 2016 AD), the Taxpayer clarifies that the Authority calculated withholding tax on the amount of (26,749,608.53) and claimed that it was the total foreign remittances, while the company's actual remittances were only (1,126,096.00). Upon requesting justification for this claim and analyzing this erroneous figure, the Authority requested a statement of foreign remittances only, and these statements were provided to the Authority. However, the Authority's study of what was submitted by the company was not a complete study. Despite the company providing all supporting data with bank account statements and corresponding account statements in its books for all its foreign remittances, the Authority did not accept this, claiming that it had evidence of those amounts and that its source was the Central Bank. What refutes this claim is that if the Central Bank sent information, it would be the same information found in the account statements of various banks, which are the primary and sole source from which information about the existence or non-existence of foreign remittances is derived, and which were provided to the Authority at all stages of correspondence. The Authority was requested during the hearing session held on 8/6/2021 AD with members of the Internal Settlement Committee to provide us with the documents it relied upon in conducting the assessment, and this is documented in the hearing minutes, but there was no response to this request from the Authority. The Taxpayer confirms the company's adherence to this request from the Authority to provide the documents it relied upon in conducting the assessment. He also confirms that the company did not make any foreign transfers other than what was declared in these years and presented within the objection memorandum submitted to the Authority on 11/06/1442 AH, and there are no transactions that require payment of withholding tax. As for the justification for rejecting the objection based on not providing reconciliation of internal and external remittances with bank statements supporting these remittances, the Authority initially on 01/04/1442 AH requested information on all foreign remittances only as amounts and purposes of remittance, which was provided to them on 01/05/1442 AH.



The amounts due for tax transactions subject to withholding tax were paid. However, they repeatedly indicated the existence of foreign remittances in the amounts of (26,749,608.33) riyals on which withholding tax is due from the Authority's perspective of (4,012,441.25) riyals and late payment penalties of (2,252,900.52) riyals. The Taxpayer confirms having no knowledge of these and the absence of supporting documents, and requested the Authority to analyze these amounts to enable research and access to them and understand their causes. However, no data was provided by the Authority regarding them. The Taxpayer was surprised by the rejection of the submitted objections on the grounds of not providing a statement including foreign and domestic remittances based on Article (63) of the Regulation, even though the request for domestic remittances is a new request that was not requested in all previous correspondence before submitting the objection, and if it had been requested from the beginning, they would have been provided with all the data required by them. The company also submitted a settlement request to the internal committees of the Authority to attach all internal and external remittances and their purposes based on all movement statements from all accounts of all banks accompanied by the analysis of all these amounts and purposes. It is clear from these data that there are no amounts or external remittances subject to withholding tax at all. As for remittances for which a withholding tax is due, they have been paid and the rest of the real remittances are not subject to the regulation because they are in exchange for the purchase of assets and machines. The decision under appeal stated that "it was found that the amounts are not identical to the bank statements and the Plaintiff did not analyze these amounts and did not submit contracts and purchase invoices for the assets. The Plaintiff did not provide the documents supporting the purchase of assets and the nature of dealing with the Jordanian manufactures mentioned in the bank statements. Based on the above, the circuit rejected the Plaintiff's objection" contradicts the documents submitted by the taxp. With regard to the Taxpayer's appeal on the clause (delay fine for the year 2016 AD), the Taxpayer stated after the aforementioned facts and the latest supporting documents and based on its claim not to make any external transfers other than what has been submitted and paid as a result of it, it is not permissible to calculate fines on remittances that do not exist. With regard to what has been calculated as a withholding tax and paid by the Taxpayer, it was during the period of the initiative to exempt from fines issued by the Zakat, Tax and Customs Authority on 21/11/2021 AD, and therefore the Taxpayer demands to accept its appeal and overturn the decision of the Adjudication Circuit on the clauses subject of its appeal.

on Monday, 13/05/2024 AD , the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members, whose names are recorded in the minutes, through video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the working rules of zakat, tax and customs committees issued by Royal Decree No. (25711) and dated: 08/04/1445 AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

## Grounds:



Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and with regard to the Taxpayer's appeal on the clause (withholding taxes on foreign remittances for the year 2016 AD), where the Taxpayer's appeal lies in the appeal against the dismissal of its objection on the clause in dispute, as it claims that the remittances are not on its part and are not in its bank accounts. based on paragraph (8) of Article Sixty-Three of the Executive Regulations of the Income Tax Law, which stipulates the following: Paragraph (8) of Article Sixty-Three of the Executive Regulations of the Income Tax Law "Withholding tax shall be imposed at the rates specified in paragraph (1) of this Article on the entire amount paid to a non-resident regardless of any expense incurred to realize this income, and regardless of the legality of accepting it or part of it as a deductible expense, even if the amounts paid relate to contracts concluded on a date prior to the entry into force of the Law." article (63) paragraph (1) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH stipulates the following: "A non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates..." based on the foregoing, and upon reviewing the supplementary memorandum submitted by the Taxpayer, who argues that the remittances mentioned by the Authority, according to the Authority's Reply Memorandum No. (2), are incorrect and there is no external transfer in the amounts mentioned by the Authority, and where the Taxpayer submitted the account statements of a company... it was previously requested from him and by looking at the account movement and comparing it with the account statement related to the company's ... the Circuit found that what was submitted did not match the previously submitted documents, and some of the transactions shown in the submitted analysis and the company's account statement do not appear ... Within a company's statement of account... This leads the Circuit to accept the appeal of the partially Taxpayer with regard to the Jordanian manufactures related to the extracts of a former employee and Dubai real estate with a total amount of (422,992) riyals and the rejection of the undocumented with a value of (17,885,732) riyals and the amendment of the decision of the Adjudication Circuit.

With regard to the Taxpayer's appeal on the clause (delay fine for the year 2016 AD), and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is

due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these regulations, including cases that are contested, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on the foregoing, and by reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the dispute between the parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the statutory texts, and where the decision of the Circuit in the first clause ended with the partial acceptance of the Taxpayer's appeal and the amendment of the Circuit's decision, which ends with the partial acceptance of the Taxpayer's appeal and the amendment of the decision of the Adjudication Circuit on this clause.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Acceptance of the appeal procedurally, submitted by / ... Company for contracting, commercial register (...), unique number (...) against the decision of the First Circuit of Income Tax Violations and Disputes in Jeddah Governorate (IZJ-2022-2710) issued in Case No. W-2021-60917 regarding the withholding tax for the month of June 2016 AD.

2- On the merits:

- a. Accepting the Taxpayer's appeal in part and amending the decision of the Adjudication Circuit regarding the clause (withholding taxes on foreign remittances for the year 2016 AD).
- b. Accepting the Taxpayer's appeal in part and amending the decision of the Adjudication Circuit regarding the 2016 AD delay fine



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-171072

Case No. IW-2023-171072

### Keywords

Withholding Tax – Imposition of 5% Withholding Tax – Acceptance of the Authority's Appeal and  
Cancellation of the Adjudication Circuit's Decision

### Summary:

the Taxpayer and the Zakat, Tax and Customs Authority's objection to the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Dammam No. (IZD-2022-2478) regarding the tax assessment for the years 2015 AD-2018 AD. the Taxpayer's appeal lies in the discretionary assessment, re-assessment and discretionary profit ratio clauses, and the Authority's appeal lies in the Circuit's decision on the 5% withholding tax for discretionary dividends, in addition to the delay fine clause. whereas, the Appellate Committee found that the 5% withholding tax for discretionary dividends was justified by the existence of revenues that the Taxpayer was not obligated to disclose and for which it was charged discretionary dividends, as explained, which justifies the imposition of a 5% withholding tax as decided by the Authority. Consequently: rejecting the Taxpayer's appeal, accepting the Authority's appeal.

### Document:

- Paragraph (a) of Article (70) of [The Sharia Procedure Law promulgated by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)
- Paragraph (a,b) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (1) of Article (63) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)

### Facts:

the appeal filed on 23/01/2023 AD, from/... National ID number: Lawyer License No .... as agent for the appellant company under Agency No. (...) the appeal filed on 26/01/2023 AD by the Zakat, Tax and Customs Authority (ZTA) against the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Dammam City (IZD-2022-2478) issued in Case No. (IW-2021-72905) related to the tax

assessment for the years 2015 AD to 2018 AD, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, was considered, in which the decision of the Adjudication Circuit ruled as follows:

1-With regard to the estimated assessment for the years from 2015 AD to 2018 AD:

- (a) Rejecting the Plaintiff's objection related to the reconnection.
- (b) Rejecting the Plaintiff's objection related to the discretionary assessment and its justifications.
- (c) Amending the Defendant's decision regarding the estimated profit rate.

2-Cancel the Defendant's decision regarding the withholding tax clause in exchange for a discretionary dividend.

3- Modify the Defendant's decision regarding the delay fine clause.

since this decision was not accepted by the parties, each of them filed a list of appeals, which included the following:

With regard to the Taxpayer's appeal against the decision of the Adjudication Circuit, its appeal lies with regard to the clause (estimated assessment for the years from 2015 AD to 2018 AD - reconnection), the clause (estimated assessment for the years from 2015 AD to 2018 AD – estimated assessment and its justifications), and the clause (estimated assessment for the years from 2015 AD to 2018 AD – estimated profit rate).

The decision was also not accepted by the Zakat, Tax and Customs Authority with regard to the clause (5% withholding tax in exchange for estimated dividends), as the appellant (the authority) demands the cancellation of the circuit's decision on this clause on the basis that the circuit issuing the decision subject to appeal has canceled the above clause and the authority replies that it does not agree with the conclusion of the circuit's decision in question, as the authority has calculated an estimated withholding tax of 5% as dividends, and upon studying the objection, the Taxpayer was estimated to be charged with a withholding tax of 5%. Accordingly, based on Article (68) Paragraph (a) of the tax law, which states: (Every resident, whether expensive or inexpensive under this Law, and the permanent establishment in the Kingdom for a non-resident who pays an amount to a non-resident from a source in the Kingdom shall deduct a tax from the amount paid and Article (63), paragraph (6), which states: Distributed profits means any distribution from a resident company to a non-meme shareholder and any profits transferred from a permanent establishment to related parties, taking into account the following: - Dividends in companies operating in the field of natural gas, oil or hydrocarbon investment are not subject to withholding tax. - Partial or full liquidation of the company in excess of the paid-up capital shall be considered as a distribution. The fact that the company is subject to income tax does not prevent the company from imposing withholding tax on the amounts distributed from it. The clause (estimated assessment for the years from 2015 AD to 2018 AD – estimated profit rate), and the clause (delay fine), as the appellant (the Authority) demands the

cancellation of the decision of the Circuit on this clause on the basis that it imposed a delay fine on the difference in the tax due and unpaid, and since the Taxpayer's objection was partially accepted, the fine will be amended by the unpaid tax difference, as the tax was imposed according to clear texts contained in the tax law and the executive regulations, as the delay fine was imposed on the unpaid tax differences on the regular date based on Article No. (77) Paragraph (a) of the income tax law, as well as based on Article No. (68) Paragraph (1/b) of the executive regulations of the income tax law, which is calculated after the legal date of submitting the declaration and not from the date of the assessment. It submitted an appeal statement, which was reviewed by the Circuit and included the incident that the Authority is demanding to accept its appeal and to overturn the decision of the Adjudication Circuit.

on Monday, 06/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via video conferencing in accordance with the procedures of remote video litigation; based on the provisions of clause no:(2) of Article Fifteen of the Rules of Work of the Committees for Adjudicating Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441 AH; after reviewing the appeal submitted by the parties to the case, and after examining the contents of the case file, the circuit decided that the case has become ready for adjudication and issuing the decision on its subject matter, so the circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, regarding the Taxpayer's appeal concerning the clause (estimated assessment for the years from 2015 AD to 2018 AD - reassessment), the clause (estimated assessment for the years from 2015 AD to 2018 AD - estimated assessment and its justifications), and the clause (estimated assessment for the years from 2015 AD to 2018 AD - estimated profit rate), since there is no reproach upon the circuit for adopting the grounds of the contested decision without adding to them, whenever it determines that those grounds are sufficient and obviate the need for presenting anything new, because in its endorsement of them with what those grounds contained, it is confirmed that it did not find in what was directed against the decision in terms of challenges anything that deserves a response beyond what those grounds included. Given this, and since it is established that the appealed decision regarding the dispute concerning the contested clauses came in accordance with the valid grounds upon which it was based and which are sufficient to support its ruling, as the circuit that issued it undertook to examine the core of the dispute therein and concluded



regarding it with the result it reached in its operative part. Since this circuit has not observed anything that requires correction or comment regarding it in light of the defenses raised before it, this circuit concludes by rejecting the Taxpayer's appeal and upholding the adjudication circuit's decision under appeal in the result it reached regarding the clauses subject to the case, based on its grounds.

Whereas, regarding the Authority's appeal regarding the clause (5% withholding tax in exchange for a discretionary dividend), and based on Article (63) Paragraph (1) of the Executive Regulations of the Income Tax Law on: "A non-resident is subject to tax on any amount received from any source in the Kingdom, and the tax is deducted from the total amount according to the following rates: .... 5% dividend payout ratio', based on the above, and where the dispute lies in the Authority's procedure of imposing an estimated withholding tax on the net profit after deducting the income tax for the years in dispute, after reviewing the audited financial statements and the assessment issued, it was found that there were revenues that the Taxpayer was not obligated to disclose and for which it was held accountable on an estimated basis, as explained, and where the Taxpayer's appeal regarding the estimated assessment was rejected for submitting financial statements that cannot be relied upon to verify the fact of paying cash distributions on unjust profits, and where there are no documents through which the profits of the establishment can be traced, which shows the correctness of the Authority's procedure in imposing withholding tax on estimated dividend distributions. upon reviewing the documents attached to the case file, it is clear that the adjudication decision referred to the necessity of service revenues for the foreign company's contracts to ensure that it discloses its real revenues, which shows that the revenues declared in the financial statements do not reflect the true reality of the revenues, as the company did not provide the agreement concluded between it and the head office and proof that its financial statements are based on regular books and records that can be relied upon in calculating its tax burden, which means that the Authority's appeal should be accepted and the decision of the Adjudication Circuit should be canceled with regard to the clause (5% withholding tax for discretionary dividends).

Whereas, regarding the Authority's appeal on the clause (Estimated assessment for the years from 2015 AD to 2018 AD – Estimated profit percentage), and whereas Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the case is set, the content of the case and the answer must be monitored before the agreement is recorded, taking into account that the origin of the case is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or Circuit, provided that the merits of the case or some of it is among those agreed upon." Based on the foregoing, and where this Circuit has proven the Authority's request to leave the appeal as





stated in the letter issued by the Authority in the supplementary memorandum, which includes the following: "The Authority wishes to inform the Honorable Circuit that it has left its appeal with regard to the above clause specifically and the procedures resulting from its appeal for this clause as per the terms of reference of the decision of the Disposition Circuit..." therefore, the Circuit shall accept the abandonment of the litigation.

Whereas, regarding the Authority's appeal regarding the clause (delay fine), and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425H, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: B- Delay in the payment of the tax due under the Authority's assessment " Based on the above, and by reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Defendant, and since the dispute between the two parties is a documentary dispute, and did not result in a significant difference in the interpretation of the statutory texts, which must partially accept the Authority's appeal and amend the decision of the Adjudication Circuit to impose the delay fine from the date of maturity on the clauses in which the Authority's appeal was accepted and the Taxpayer's appeal was rejected, and the delay fine fell on the clauses in which the Authority's procedure was canceled due to the forfeiture of the original imposition of the tax.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

First: Accepting the appeal procedurally from the Taxpayer / ... company Commercial registration (...), unique number (...) the appeal filed by the Zakat, Tax and Customs Authority against the decision of the First Circuit for the Resolution of Income Tax Violations and Disputes in Dammam, No. (IZD-2022-2478) issued in Case No. (IW-2021-72905) related to the tax assessment for the years 2015 AD to 2018 AD.

Second: On the merits:

1- Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause (5% withholding tax for discretionary dividends).



2- Accepting the Authority's appeal in part and amending the decision of the Adjudication Circuit with regard to the delay fine clause.

3- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (Estimated assessment for the years 2015 AD to 2018 AD - Re-assessment ing -).

4- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (Estimated assessment for the years 2015 AD to 2018 AD - Estimated assessment and its justifications).

5- Regarding the parties' appeal on the clause (Estimated assessment for the years 2015 AD to 2018 AD - Estimated Profit Ratio):

A. accepting the abandonment of litigation regarding the Authority's appeal on the clause (Estimated assessment for the years 2015 AD to 2018 AD - Estimated Profit Rate).

B. Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (Estimated assessment for the years 2015 AD to 2018 AD - Estimated Profit Percentage).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-170647

Case No. IW-2023-170647

### Keywords

Withholding tax - 15% withholding tax on transactions between related parties Payments made by the parent company to third parties on behalf of the Saudi subsidiary - Acceptance of the Taxpayer's appeal

### Summary:

The Taxpayer's objection to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2475), where the Taxpayer's appeal lies in the clause (withholding tax of 15% on transactions between related parties, payments made by the parent company to others on behalf of the Saudi subsidiary) to impose withholding tax of 15% on bank guarantee fees), as the lending bank is not a party associated with the subsidiary (the Taxpayer) or the parent company, and therefore the imposition of a rate of (15%) is incorrect. On the consulting fees paid to a non-resident and unrelated party, the Taxpayer indicated in its regulation that the parent company pays on its behalf and the Taxpayer compensates it for the consulting fees provided by the consulting company. And on various other payments to non-resident unrelated parties represented in: Pilot tickets, non-taxable services, and consultation fees. And on payments to a law firm as the nature of the service is legal advisory services to establish the subsidiary and the actual beneficiary of the services provided by the law firm is the subsidiary (assignee). And on several other clauses. Whereas, the Appeal Committee has proven the validity of the allegations of the Taxpayer in all of the above except with regard to the pilots' tickets, as the invoices submitted are related to the year 2018 AD, while the dispute is for the years 2017 AD and 2019 AD . This means accepting the Taxpayer's appeal on some clauses and rejecting it in others.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (5) of [The Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (a) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)



- Article (63) of [The executive regulations of the income tax law issued by the decision of His Excellency the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)
- Paragraph (3) of Article (67) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425H](#)
- Article (68) of [The Executive Regulations of the income tax law issued by the decision of His Excellency the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)

### Facts:



The appeal filed on 18/01/2023 AD by/ (...), in its capacity as the director of the appellant company, the Zakat, Tax and Customs Authority, against the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2475) issued in Case No. (IW-2021-80364) related to the assessment of withholding tax for the years from 2017 AD to 2019 AD, was considered in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

- 1- Modification of the Defendant's decision regarding withholding tax at 15% on transactions between related parties: Payments made by (Company A (Foreign)) to third parties on behalf of (Company B) Saudi Arabia for the years from 2017 AD to 2019 AD.
- 2- Rejection of the Plaintiff's objection regarding the payroll clause for 2019 AD.
- 3- Rejection of the Plaintiff's objection regarding the 15% withholding tax assessment clause on transactions between related parties for 2019 AD.
- 4- Rejection of the Plaintiff's objection regarding the 5% withholding tax assessment clause on transactions with third parties for the year 2019 AD.
5. Amend Defendant's decision regarding late payment fine.

since this decision was not accepted by the parties, each of them filed a list of appeals, which included the following:

With regard to the Taxpayer's appeal against the decision of the Adjudication Circuit, its appeal is in relation to the clause (15% withholding tax on transactions between related parties, payments made by (a foreign company) to others on behalf of (a Saudi company) for years), the Taxpayer claims that it does not agree with the decision of the Adjudication Circuit and submits its claims as follows: Impose withholding tax at a rate of 15% on bank guarantee fees of 12,422,913 riyals: In 2017 AD, it was awarded (...) Construction contract to the consortium of companies consisting of (Company A) and (Company C (Foreign)). In implementation of the contract, (Company A) was established as a 100% owned limited liability company under the name of Company B - Saudi Arabia. In order to secure the Contract and commence the work, the



Company was required to provide an advance payment and a performance bond (Performance Bond) issued by a Saudi bank for the duration of the Contract in the amount of SAR 262,500,000. Since the company was in the process of incorporation, a company contacted its bank in Turkey (...) to arrange a performance guarantee. The Bank requested Banque Saudi Fransi (BSF) to issue a Performance Bond. The Turkish bank issued the letter of guarantee and requested Banque Saudi Fransi as the corDefendant bank to issue the bank guarantee. Banque Saudi Fransi submitted the bank guarantee to the General Authority of Civil Aviation. Türkiye Bank issues Performance Bond invoices on a quarterly basis. Since the performance guarantee fees are similar to the loan fees, the company pays 5% withholding tax on these fees, the Taxpayer (company B) explains that the Turkish bank is not a related party to the company or company A, and therefore, the imposition of 15% withholding tax on these fees is clearly unfair. Consultancy fees paid to a non-resident and unrelated party SAR 6,976,650: The Taxpayer indicates that (...) is a consulting company based in Turkey and is an unrelated party. (...) Providing consulting services, and has signed a contract with the company to modernize the taxi corridor at King Khalid International Airport in Riyadh and the Red Sea Airport in Jeddah. Company (...) and Company (B) signed a contract and Company (B) issues invoices directly to the company providing the above services. Whereas, the technical services provided by a non-resident party and unrelated to an establishment in the Kingdom of Saudi Arabia are subject to 5% withholding tax in accordance with the tax regulations. Various other payments to unrelated non-resident parties SAR 615,725: The imposition of a 15% withholding tax is not valid according to the tax regulations, and there are various other payments made to non-resident and unrelated parties, which are not subject to withholding tax due to their nature. Accordingly, it requests to cancel the 15% withholding tax calculation. Payments to (...) Law Firm — a company residing in Saudi Arabia SAR 721,000: The Taxpayer explains that in 2017 AD, (Company A) decided to establish a subsidiary (Company B) in the Kingdom of Saudi Arabia. Accordingly, it appointed an attorney to assist in the establishment of the legal entity in the Kingdom of Saudi Arabia. Company B recorded after including these expenses in its books as part of the pre-establishment expenses and accordingly, the actual beneficiary of the services provided by the law firm is Company B. No withholding tax should be imposed on the advance payment to the resident Saudi entity for its services. Various other payments to unrelated parties residing in the Kingdom of Saudi Arabia SAR 1,305,241: The Taxpayer indicates that the amount of SAR 1,305,241 relates to daily business expenses (i.e., travel cost, other personnel-related costs, etc.) and consultancy services provided by companies residing in the Kingdom of Saudi Arabia, and since the services were provided by resident parties not associated with Company B. Hence, it is not valid to impose withholding tax on the advance payment to the resident Saudi entity for the services. In this regard, the Taxpayer would like to point out that the amount of SAR 1,305,241 includes the services provided by various resident suppliers. The volume of supporting documents (i.e. invoices and agreements) is huge. Accordingly, the Assignee attached in Appendix 12 a summary of the Services provided by the Resident Suppliers together with the nature of the Services and a sample of invoices. With regard to the clause (delay fine), the Taxpayer does not agree with the Authority; as it relied

on paragraph (a) of Article 77 of the Income Tax Law, the aforementioned condition in the Income Tax Law does not apply to the case of the Taxpayer because the aforementioned condition applies only to the delay in the payment of taxes. Thus, it does not apply with regard to the tax assessment, as we highlight to Your Excellency that in Article 71 (1) and (2) of the Executive Regulations it is expressly stipulated that the tax shall be payable when the assessment of the Authority becomes final, and with regard to the clause (withholding tax of 15% on the salaries paid to the employees of B – 478,536 riyals), the Taxpayer claims that the expenses in dispute represent payments to the employees of the Company. And that all employees work in accordance with the employment agreement with the company, in addition to the salaries of the company's employees were paid locally in accordance with the contract of employment with the company, and in connection with the clause (withholding tax of 15% on payments to the parties is not related), the Taxpayer claims that (...) and (...) They are unrelated parties to Company B. Accordingly, and in accordance with the regulations of the Kingdom of Saudi Arabia, payments to a non-resident and unrelated party for consulting services are subject to a withholding tax of (5%). The company paid a withholding tax of (5%) at the time. With regard to the clause (withholding tax of 5% on payments to unrelated parties), the Taxpayer claims that the full name of the company (...) is (...), which is a non-resident and unrelated party. Whereas the company (the Taxpayer) reported the transaction in the name of (...) and paid a withholding tax of (5%) at the time of payment to (...) Therefore, it is not valid to impose a withholding tax of (5%), and therefore the Taxpayer requests to overturn the decision of the Adjudication Circuit on the clauses subject of appeal for the above grounds.

The decision was also not accepted by the Zakat, Tax and Customs Authority, which appealed the objectionable decision under an appeal regulation that included its objection to the clause (withholding tax of 15% on transactions between related parties, payments made by Company A to others on behalf of Company B Saudi Arabia) and the clause (delay fine). Accordingly, the Authority adheres to the validity and safety of its action and requests that the decision of the Adjudication Circuit on the appealed clauses be overturned for the grounds provided.

on Thursday, 13/06/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via video conferencing in accordance with the procedures of remote video litigation; based on the provisions of clause no:(2) of Article Fifteen of the Rules of Work of the Committees for Adjudicating Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441 AH; after reviewing the appeal submitted by the parties to the case, and after examining the contents of the case file, the circuit decided that the case has become ready for adjudication and issuing the decision On the merits, so the circuit decided to close the pleadings and reserve the case for adjudication.

## Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and as for the Taxpayer's appeal regarding the clause (15% withholding tax on transactions between related parties, payments made by (Company A) to third parties on behalf of (Company B) Saudi Arabia ), and where Article (5) of the Income Tax Law stipulates: (a) Income is considered accrued in the Kingdom in any of the following cases: (1) If it is derived from an activity which occurs in the Kingdom. (7) Amounts paid against services rendered by a resident company to the company's head office or to an affiliated company. (8) Amounts paid by a resident against services performed in whole or in part in the Kingdom. (b) The place of payment of income is not considered to determine its source."Article (5) of the Executive Regulations of the Income Tax Law stipulates the following: "The following types of income are considered to have arisen from an activity carried out in the Kingdom, and therefore verified from a source in the Kingdom: 1-The proceeds of the loan to a non-resident in one of the following cases: a- If the debt is secured by movable or immovable property located in the Kingdom. (b) If the borrower is a resident of the Kingdom. Loan proceeds means any amounts realized in return for the use of money, including income from lending operations, of any kind, whether collateralized or unsecured, and whether or not granted the right to participate in the debtor's profits, including income from government and non-government bonds. (With the exception of loan proceeds resulting from interbank deposits "... If the deposits remain with the resident presumptive bank for a maximum period of ninety days, provided that it submits an annual statement approved by the Saudi Arabian Monetary Agency indicating the names and addresses of the lending banks, the duration of the loan and the amount of loan proceeds paid." Article (63) of the Executive Regulations of the Income Tax Law stipulates the following: "1- a non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates..." 20% management fees. 15% royalty or royalty, payments for technical or consulting services or international telephone communication services paid to the head office or an associated company. 5% Technical or consultancy services, or international telephone services other than payments made to the head office or an affiliated company, rent, airline tickets or air or sea freight, distributed profits, loan interest, insurance or reinsurance premiums. 15% Any other payments."Based on the above, the Circuit found the following:

A- Imposing a withholding tax of (15%) on the bank guarantee fees (12,422,913 riyals), the Taxpayer claims that the bank (...) It is not a party associated with the company or the parent company, Company A, and therefore the imposition of a percentage of (15%) is incorrect, and it is explained that the payment of these

expenses by Company A is due to the fact that this transaction of the performance guarantee arrangement was before the establishment of the company (February 14, 2017) and therefore it was not possible for the company to pay directly to Bank (...) for this arrangement, and by reviewing the documents submitted, it is clear that the Taxpayer submitted a translation of the invoices issued by Bank (...), and also provided a copy in English of the bank guarantee issued by Banque Saudi Fransi and the bank guarantee fees charged by Bank (...), and since the nature of the amounts paid is to pay the fees of the letter of guarantee (i.e. the proceeds of loans) to the bank (... Al-Turki), which is a non-resident party through the parent company (Company A) on behalf of the Taxpayer. The Taxpayer also states that it has paid the withholding tax on the amounts in dispute, and reviewed a copy of the additional withholding tax returns for the years 2017 AD, 2018 AD and 2019 AD submitted in Appendix (7). It is clear that the Taxpayer has already deducted (5%) from the amount of the dispute with a value of (12,422,913 riyals), and accordingly, the circuit ends up accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (imposing a withholding tax of 15% on the bank guarantee fees).

B- Consultancy fees paid to a non-resident and unrelated party (6,976,650 riyals), and since the nature of the transaction is that they are consulting services provided by a non-resident company (...). It is a Turkey-based facility that provides consulting services related to the upgrading and rehabilitation of the taxi corridor at King Khalid International Airport in Riyadh, which means that the amounts paid to the company are from a source of income in the Kingdom, and since the Taxpayer explained that it signed a company (...) Company B (the Taxpayer) contract, the company (...) By issuing invoices directly to the company for which you provide services, and the Taxpayer attached the agreement signed with the company (...) Whereas the Taxpayer indicated in its regulation that the parent company A paid on its behalf and the Taxpayer compensates Company A for the consulting fees provided by (...) Therefore, the transaction with a related party is not considered as the consulting services are provided by the company (...), with which the circuit ends up accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (consultancy fees paid to a non-resident and unrelated party).

C- Various other payments to non-resident unrelated parties (SAR 615,725):

1- Air tickets in the amount of (435,004 riyals) for the years 2017 AD and 2019 AD: With reference to the supplementary memorandum of the Authority, it was found that by reviewing the invoices submitted, it was found that they related to the year 2018 AD, while the dispute for the years 2017 AD and 2019 AD, and by reviewing the supplementary response memorandum submitted by the Taxpayer, it was found that it did not address the clause in dispute, nor did it respond to the Authority's arguments regarding the fact that the air ticket invoices related to the year 2018 AD, and it did not submit the supporting documents, which ends with the Circuit rejecting the Taxpayer's appeal and supporting the decision of the Classification Circuit regarding the clause (air tickets for the years 2017 AD and 2019 AD).



2- Consultation fees (102,682) riyals for the year 2017 AD: By reviewing the attached documents, it is clear that the Taxpayer submitted a copy of the invoices related to the consultancy services. He also attached the withholding tax declarations, through which it was found that the Taxpayer paid the withholding tax for the amounts in dispute. Whereas, the nature of these amounts is subject to withholding tax at a rate of 5% in accordance with Article (63) of the Executive Regulations of the Income Tax Law, which ends with the Circuit accepting the Taxpayer's appeal and canceling the decision of the Segregation Circuit regarding the clause (consulting fees for the year 2017 AD).

3- Non-taxable services: Transportation of employees and meals (63,638) riyals and visa fees and other fees (14,410) riyals for 2017 AD: By reviewing the documents attached to the case file, it becomes clear that the nature of these services is not subject to withholding tax. The Taxpayer also attached a sample of invoices in Appendix No. (6) to it, which ends with the circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (non-taxable services: Transportation of staff, meals, visa fees and other fees for the year 2017 AD).

D- Payments to a company (....) Law Firm – a company residing in Saudi Arabia in the amount of (721,000 riyals), and since the nature of the service is legal services and advice to establish a company (Company B) a new construction company with limited liability in the Kingdom of Saudi Arabia, as in 2017 AD, Company A decided to establish a subsidiary (which is Company B), and by reviewing the attached documents, it is clear that the Taxpayer submitted the agreement and invoices submitted by the Office of (....) and its law partners, and therefore it is clear that the actual beneficiary of the services provided by the office of (....) The law firm is Company B (the Taxpayer), which ends with the circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (payments to (....) Law Firm – a company residing in Saudi Arabia).

E- Various other payments to unrelated parties residing in the Kingdom of Saudi Arabia, and since the Taxpayer indicated that the amounts in dispute relate to daily business expenses, that is, the cost of travel and other costs related to employees, and consultancy services provided by companies residing in the Kingdom of Saudi Arabia, and therefore it is not valid to impose a withholding tax on the services provided by resident parties unrelated to Company B, and by reviewing the documents attached to the lawsuit file, it becomes clear that the Taxpayer submits a lease contract for the office of ... company He also submitted a statement of account in Appendix F in the amount of 30,000 riyals. Whereas, those amounts paid to an entity residing in the Kingdom are not subject to withholding tax, which leads the Circuit to partially accept the Taxpayer's appeal regarding the amount of (30,000) riyals and amend the decision of the Segregation Circuit regarding the clause (various other payments to unrelated parties residing in the Kingdom of Saudi Arabia).

Whereas, with regard to the Taxpayer's appeal regarding an clause (withholding tax of 15% on the salaries paid to the employees of B Company – 478,536 riyals), and where the Taxpayer's appeal lies in objecting

to the decision of the Adjudication Circuit towards this clause, as it claims that the disputed expenses represent payments to the company's employees and that all employees work in accordance with the employment agreement with the company, in addition to the salaries of the company's employees were paid locally in accordance with the contract of employment with the company. Whereas Article (63) of the Executive Regulations of the Income Tax Law stipulates the following: "1- a non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates..." 20% management fees. 15% royalty or royalty, payments for technical or consulting services or international telephone communication services paid to the head office or an associated company. 5% Technical or consultancy services, or international telephone services other than payments made to the head office or an affiliated company, rent, airline tickets or air or sea freight, distributed profits, loan interest, insurance or reinsurance premiums. 15% Any other payments." Circular No. (8922/9/1438) dated 03/01/1438 AH stipulates in paragraph No. (2) that salaries and wages are not subject to withholding tax if the controls for considering the contract an employment contract are met, as follows: "2. Or in return for a work wage resulting from an employment relationship for specific work contracts (whether the contract is for a period of one year or less). This income is not taxable in the Kingdom as salaries and wages. The contract shall be classified as an employment contract if it meets the following controls: - The authority of the employer to monitor the manner and performance of the work. - Determining the working hours and monitoring its times and schedules by the employer. - Determining the place of performance of the service by the employer. - Identify work tools and other relevant facilities. - Receive work-related guidance from the employer. - Disbursing their fees and wages on specific dates. Based on the foregoing, and where the basis for rejecting the objection of the Taxpayer not to provide residence permits and contracts and to prove the payment of salaries to employees from the Taxpayer directly, and by reviewing the documents attached to the case file, it is clear that the Taxpayer attaches the details of salary expenses with the form of employment contracts for employees and residencies, and also attaches the receipts of salaries, and where it was proven that the salaries were paid by the Taxpayer and that these amounts represent the salaries and wages of employees working in the Kingdom of Saudi Arabia and not in exchange for services provided by the head office of the branch, which ends with the Circuit accepting the Taxpayer's appeal and canceling the withholding tax on employees' salaries.

Whereas, with regard to the Taxpayer's appeal on the clause (5% withholding tax on payments to unrelated parties), and where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit regarding this clause, as it claims that the full name of the company ((...) (Short name)) is ( (...) (Unabridged name) which is a non-resident and unrelated party. The company (the Taxpayer) reported the transaction in the name of (the abbreviated name) and paid a withholding tax of (5%) at the time of payment to ((...)) Therefore, it is not valid to impose a withholding tax of (5%). Whereas Article (63) Paragraph (1) of the Executive Regulations of the Income Tax Law stipulates that: "The non-resident shall be subject to tax for any amount obtained from any source in the Kingdom, and the tax shall be deducted from the total amount



according to the following prices, including royalty or royalty, payments for services paid to the head office or an associated company at a rate of 15%." Based on the above, and since the Authority stated that it reviewed the annual withholding tax statement for 2019 AD and it was not found that the Taxpayer paid the withholding tax on the amounts paid to (...) He also claims that it found the same amount in the annual deduction but for other companies and not(...), while the Taxpayer clarified in its appeal that the full name of the company (...) (...) By reviewing the withholding tax statement for 2019 AD in Appendix (7), it is clear that the amount in dispute belongs to the company (...), which leads the Circuit to accept the Taxpayer's appeal and cancel the Circuit's decision.

Whereas, with regard to the Taxpayer's appeal on the clause (delay fine), and where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit regarding this clause, it claims that Article (71) of the executive regulations explicitly stipulates that the tax shall be payable when the association of the authority becomes final. Whereas paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states that: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in the payment of the tax to be withheld and accelerated payments, calculated from the date the tax is due to the date of payment." Paragraph (1) of Article 68 of the executive regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b. Delay in paying the tax due under the Authority's assessment." Article 67(3) of the Executive Regulations of the Income Tax Law also stipulates: "Unpaid tax means the difference between what the Taxpayer paid on the regular date, and the tax payable under the provisions of the Law. It includes the amendments made by the Authority, which have become final as stated in paragraph (2) of Article Seventy-one of these Regulations, including the cases objected to, where the fine is calculated from the date of the regular date of submission of the declaration and payment. Based on the foregoing, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, which ends with the Circuit amending the Circuit's decision to impose the delay fine from the due date on the clauses in which the Taxpayer's appeal was rejected, and the delay fine falls on the clauses in which the Taxpayer's appeal was accepted.

Whereas, regarding the Authority's appeal regarding the clause (15% withholding tax on transactions between related parties, payments made by (Company A) to others on behalf of B Saudi Arabia Limited) and the clause (delay fine), and whereas Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit

shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the case is set, the content of the case and the answer must be monitored before the agreement is recorded, taking into account that the origin of the case is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or Circuit, provided that the merits of the case or some of it is among those agreed upon." Based on the foregoing, and where this Circuit has established the Authority's request to leave the appeal as stated in the letter issued by it in the supplementary memorandum containing the following: "The Authority would like to inform the esteemed Circuit to abandon its appeal in relation to the above clause and the procedures resulting from the Authority's appeal, according to the findings of the decision of the Adjudication Circuit in terms of the merits, with the Authority upholding its right regarding the fines imposed on the other clauses in dispute." therefore, the Circuit shall accept the abandonment of the litigation.

Regarding the remaining clauses subject to the lawsuit, there is no fault with the Circuit in adopting the grounds of the decision under appeal without adding to them when it deemed that those grounds are sufficient without mentioning anything new, because in its endorsement of them with what those grounds contained, it is confirmed that it did not find in what was directed against the decision by way of appeals anything that deserves a response with more than what those grounds contained. Since this is the case, and it is established that the decision subject to appeal regarding the dispute concerning the clauses under appeal came in accordance with the valid grounds on which it was based and which are sufficient to support its judgment, as the Circuit that issued it undertook to examine the essence of the dispute therein and concluded regarding it with the result it reached in its operative part. Since this Circuit did not observe anything that calls for correction or comment regarding it in light of what was presented by way of defenses raised before it, this leads this Circuit to reject the Taxpayer's appeal and uphold the Resolution Circuit's decision subject to appeal in what it concluded as a result in the remaining clauses subject to the lawsuit, based on its grounds.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

First: Acceptance of the appeal procedurally from the Taxpayer / ... company, Commercial Registration (...), Unique Number (...) And the appeal submitted by the Zakat, Tax and Customs Authority, against the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2475) issued in Case No.(IW-2021-80364) related to the assessment of withholding tax for the years from 2017 AD to 2019 AD.

Second: On the merits:



1-With regard to the Taxpayer's appeal on the clause (15% withholding tax on transactions between related parties, payments made by them. Company A for third parties on behalf of Saudi Arabia Company Limited):

(a) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (imposing withholding tax at a rate of 15% on the bank guarantee fees).

(b) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (consultancy fees paid to a non-resident and unrelated party).

2- With regard to the Taxpayer's appeal on an clause (various other payments to non-resident unrelated parties):

A- Rejection of the Taxpayer's appeal and support of the decision of the Circuit of Class with regard to the clause (airline tickets for the years 2017 AD and 2019 AD).

B-Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (Consultation fees for the year 2017 AD).

(c)Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (non-taxable services: Transportation of staff, meals, visa fees and other fees for the year 2017 AD).

D- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (payments to the ... company. Law Firm – a company residing in Saudi Arabia).

(e) Accepting the partially assigned appeal and amending the decision of the Adjudication Circuit regarding clause (various other payments to unrelated parties residing in the Kingdom of Saudi Arabia).

3- Acceptance of the abandonment of the litigation in relation to the Authority's appeal on an clause (withholding tax of 15% on transactions between related parties, payments made by Company A – to third parties on behalf of Company B Saudi Arabia Limited).

4- Accepting the abandonment of the litigation with regard to the Authority's appeal on the clause (delay fine).

5- Accepting the Taxpayer's appeal and canceling the Adjudication Circuit's decision regarding the clause (15% withholding tax on the salaries paid to the employees of Company B).

6- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding an clause (withholding tax of 15% on payments to the parties is not related).

7- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (5% withholding tax on payments to unrelated parties).

8- Amending the decision of the Adjudication Circuit regarding (delay fine).



This decision is considered final according to the provisions of Articles 47 and 48 of the rules of operation of the committees for adjudicating tax violations and disputes.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-180339

Case No. I-2023-180339

### Keywords

Withholding tax - Withholding tax on dividends -Acceptance of the Authority's appeal

### Summary:

The Zakat, Tax and Customs Authority objected to the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6708), where its appeal lies on the clause (considering the Taxpayer subject to income tax as a resident company or permanent establishment), as it claims that the Taxpayer carries out the activity in the Kingdom through a permanent establishment in it, and the clause (withholding tax on dividends), as it claims that the withholding tax was calculated after excluding the income tax calculated as dividends. Whereas the Appeal Committee has established that the Authority's appeal is based on the adjudication decision that ended up amending the Authority's decision to impose withholding tax by adopting the amendment that became (15%) instead of (40%), and accordingly, where the opinion in the above clause ended up accepting the Authority's appeal in imposing an estimated profit of (40%), which necessitates amending the imposition of withholding tax on the net profit after amending the percentage to (40%) applied in the above clause. Consequently, the authority's appeal is accepted, and the decision of the adjudication committee is canceled.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (2) of [The Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (4) of Article (16) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)

## Facts:



The submitted appeal was heard on: 26/02/2023 AD; from/ the Zakat, Tax and Customs Authority (ZTA), on the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (IFR-2022-6708) issued in Case No. (I-2021-57543) regarding the tax assessment for the years 2015 AD to 2018 AD, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows: The Taxpayer's claim was filed by the Taxpayer against the Zakat, Tax and Customs Authority:

- 1- Rejection of the Plaintiff's objection regarding the clause (considering the Taxpayer a tax evader).
- 2- Amending the Defendant's decision with other objections.

Whereas this decision was not accepted by the appellant (Zakat, Tax and Customs Authority), it submitted an appeal regulation that was reviewed by the Circuit, where the appeal of the Authority lies on the clause (the Taxpayer is considered subject to income tax as a resident company or a permanent establishment), the Authority considered the Taxpayer as a permanent establishment based on what is established in the financial statements and what is listed under the name of the company in the financial statements as (a foreign company operating in the Kingdom of Saudi Arabia through a permanent establishment), and thus the company is included among the taxable persons as it exercises the activity in the Kingdom through a permanent establishment based on clause 1) of the executive regulations of the income tax law. Upon studying the objection, the financial statements were reviewed and it was found that the phrase (a foreign company operating in the Kingdom of Saudi Arabia through a permanent establishment) was included under the name of the company, a legal classification that was confirmed by the Taxpayer in the lists. Accordingly, the objection of the Taxpayer was rejected and it was considered a person subject to income tax based on clause (c) of the Executive Regulations of the Income Tax Law, which stipulated (Article 2: Taxable Persons: (c) A nonresident who conducts business in the Kingdom through a permanent establishment. Based on Article Five, Paragraph (10/a), which stipulates: Article Five: 10/A If the income belongs to a permanent establishment of a non-resident located in the Kingdom, including income from sales in the Kingdom of goods of the same type or similar to goods sold by the non-resident through the permanent establishment, and income arising from providing services or performing other activities in the Kingdom of the same nature as the activity performed by the non-resident through the permanent establishment, or similar activity thereto). The circuit that issued the appealed decision modified the Authority's decision since the dispute lies in applying a different estimated net profit rate from the mentioned rates. The Authority responds to this by stating that based on what the Taxpayer submitted in terms of defenses and documents for the referred clause, and what was stated in the reasoning of the adjudication circuit's decision regarding the application of the estimated profit rate by the Authority at (40%), that it has no basis in the rates approved in Article (16/Paragraph 4) of the Executive Regulation of





the Income Tax Law, as the company's activity centers on general trade, import and export. Therefore, the Authority confirms that according to Paragraph (4) of Article (16) of the Executive Regulation of the Income Tax Law, no higher rate for estimated net profit was specified, but rather the regulatory paragraph mentioned that it shall not be less than, and its text is as follows: "4. The estimated net profit shall be determined according to the available evidence, facts or indicators related to the activity of the Taxpayer, its nature and the circumstances surrounding it, and in all cases not less than the rates coming from the Taxpayer's revenues (according to the table referred to in the regulation)." Based on the above, the Authority confirms that the estimated profit rate (40%) imposed on the Taxpayer is commensurate with its activity. With regard to the Authority's appeal regarding the clause (withholding tax on dividends), the Authority calculated a withholding tax on the estimated profits after excluding the income tax calculated as dividends in accordance with Article (16), paragraph (3) of the Executive Regulations of the Income Tax Law due to the lack of accounting records and books for the years under examination. Upon studying the objection, it was found that the Taxpayer does not have accounting books and records according to the statement of the chartered accountant in the objection submitted and the report of the chartered accountant in the financial statements, in which it was proven that it refrained from expressing an opinion because it was unable to examine and verify the validity of the accounts. The financial statements approved by the company's management and submitted by the Taxpayer show that the income of the year is closed annually in the current account of the head office, which confirms that the income of the permanent establishment is closed first in the books in the accounts of the head office, and therefore this is one of the means of payment and the like, which confirms that the estimated profits must be subject to withholding tax, after deducting the corresponding income tax. This is supported by the decision of the Appeal Committee No. (1586) of 1437 AH in Appeal No. (1490/z) of 1434 AH, which rejected the Taxpayer's appeal in its request not to calculate a withholding tax on the estimated profits distributed, which gave the Authority the right to account the Taxpayer in a discretionary manner to reduce cases of evasion in accordance with the cases stipulated in Article (16) Paragraph (3) of the Executive Regulations of the Income Tax Law, which stipulates: (The Authority has the right to oblige Taxpayers to comply with the statutory requirements and to reduce tax evasion cases C – The Taxpayer was unable to prove the validity of the declaration information under supporting documents, taking into account what was stated in paragraph (3) of the previous and fifty article of this regulation ). Accordingly, the Taxpayer's objection was rejected, and the circuit issuing the decision subject of appeal amended the decision of the Authority because the imposition of the withholding tax is assessment ed to the payment process and the like, such as the settlement between the accounts and the clearing. The Authority answers that based on the Taxpayer's defenses and documents for the aforementioned clause, the grounds for the decision of the circuit to accept the Authority's procedure in imposing withholding tax on the estimated profits, and as long as the Plaintiff did not submit the supporting documents, including the account of the head office, which is considered the closure of the profits of the year in the account of the head office as payment, and as a result of the soundness of the Authority's

procedure on clause (II) by imposing the prescribed percentage on the Taxpayer of the estimated net profit by (40%) and the correlation of the resulting estimated profit of clause (II) Accordingly, the Authority affirms the validity and soundness of its proceedings and requests that its appeal be accepted and that the decision of the Adjudication Circuit regarding the clauses subject to appeal be revoked.

on Tuesday, 16/04/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes met via videoconferencing in accordance with the procedures for remote videoconferencing; based on the provisions of Clause No. (2) of Article Fifteen of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441 AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit did not find it necessary for the parties to the appeal to be present, the Circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, with regard to the Authority's appeal on the clause (considering the Taxpayer subject to income tax as a resident company or permanent establishment), where the Authority's appeal lies in the appeal on the acceptance of the Adjudication Circuit of the Taxpayer's objection to the clause in dispute, as it claims that the Taxpayer carries out the activity in the Kingdom through a permanent establishment in it. Based on Article (2) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH, which stipulated the taxable persons: A non-resident person who carries out the activity in the Kingdom through a permanent establishment. " Whereas Paragraph(4) of Article (16) of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH stipulates that: "The estimated net profit shall be determined in accordance with the available evidence, facts or indicators related to the Taxpayer's business, nature and surrounding circumstances, and in no case less than the following rates of the Taxpayer's revenues: activities other than those mentioned above are 15%. Whereas Paragraph(3) of Article (57) of the Implementing Regulations of Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH stipulates that: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on

the above, it is clear that the Authority's appeal is limited to the estimated profit rate it imposed on the Taxpayer, and by reviewing the outcome of the adjudication decision, it is clear that it considered that the Taxpayer is subject to other activities, which are subject to an estimated profit rate of (15%), and by referring to Article (16) Paragraph (4) of the Income Tax Regulations, it is clear that it gave the Authority the right to estimate the estimated percentage on the discretionary Taxpayer, at least the percentage stipulated, and therefore, since the Taxpayer is from other activities, which are subject to a percentage of (15%), the Authority has the right to impose an estimated profit rate of not less than (15%) , which leads the Circuit to accept the Authority's appeal and cancel the decision of the Circuit of Classification on this clause.

With regard to the Authority's appeal on the clause (withholding tax on dividends), where the Authority's appeal lies in the appeal on the Adjudication Circuit's acceptance of the Taxpayer's objection to the disputed clause, as it claims that the withholding tax was calculated after excluding the income tax calculated as dividends. Based on paragraph No. (3) of Article (57), which stipulates the following: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the above, it is clear that the Authority's appeal is based on the adjudication decision, which ended with amending the Authority's decision to impose withholding tax by adopting the amendment that became (15%) instead of (40%), and accordingly, where the opinion in the above clause ended up accepting the Authority's appeal in imposing an estimated profit of (40%), which necessitates amending the imposition of withholding tax on the net profit after amending the percentage to (40%) applied in the above clause, which leads the Circuit to accept the Authority's appeal and cancel the decision of the Circuit of Class on this clause.

with regard to the Authority's appeal regarding the clause (Payments from customers), the Circuit has no fault in adopting the grounds for the decision under appeal without adding to them when it assesses that these grounds make it unnecessary to introduce anything new, because in supporting the decision with the content of these grounds, it is certain that it did not find any objections to the decision that merit a response beyond what is contained in these grounds as the issuing Circuit scrutinized the dispute and reached the conclusion it reached in its operative part, and as this Circuit did not observe anything that warrants censure or comment on it in light of the defenses raised before it, this Circuit concludes to reject the Authority's appeal and uphold the decision of the adjudication Circuit with respect to the outcome of the clauses at issue in the case, based on the grounds for the decision. On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:



### Decision:

1- Accepting the appeal procedurally from the Zakat, Tax and Customs Authority, against the decision of the Second Circuit for adjudicating income tax violations and disputes in Riyadh, No. (IFR-2022-6708) issued in Case No. (I-2021-57543) related to zakat fees for the years 2015 ad to 2018 AD.

2- On the merits:

(a) Accepting the appeal of the authority and canceling the decision of the Adjudication Circuit regarding the clause (considering the Taxpayer subject to income tax as a resident company or permanent establishment).

(b) Accepting the appeal of the authority and canceling the decision of the Adjudication Circuit regarding the clause (withholding tax on dividends).

(c) Rejecting the Authority's appeal and upholding the decision of the Adjudication Circuit with regard to the delay fine clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-191914

Case No. W-2023-191914

### Keywords

Withholding Tax - Request for Refund for Periods - Acceptance of Taxpayer's Appeal

### Summary:

the Taxpayer's appeal against the decision of the First Circuit of Income Tax Violations and Disputes in Dammam (IZD-2023-143920), where its appeal is based on the clause "Request for refund of withholding tax paid for a company.. it is not entitled to apply the agreement and recover the withholding tax because it is not a resident of the Kingdom. the Appellate Committee found by reviewing the translated copies of the labor contract that the services consist of performing engineering and project management services on a task force basis for the designated company's facilities that it wishes to design, construct and conduct operational testing in Ras Tanura, and since the services can be applied from outside the Kingdom, and the staff visits did not exceed (183) days, and the Authority did not provide otherwise. This means; accepting the Taxpayer's appeal and canceling the decision of the adjudicating circuit.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (35) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (4) of Article (66) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425 AH](#)

### Facts:

The submitted appeal was heard on: 10/02/2030 AD, from/..., National ID No. (...) In its capacity as the legal representative of the appellant company, on the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2023-143920) issued in Case No. (W-2020-143920) related to the refusal to recover the value of withholding tax for the year 2012, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

Reject the Plaintiff's objection related to the refund of the withholding tax paid by (...) company.

since this decision was not accepted by the Taxpayer (... company), it filed a list of appeals, which included the following:

The Taxpayer objects to the decision of the Adjudication Circuit in question, it claims that with regard to the clause (request for refund of withholding tax paid by a ... company) The Taxpayer claims the annulment of the circuit's decision on this clause on the basis that the ... company on its right to apply the agreement and recover the withholding tax because it is not resident in the Kingdom, and does not have a permanent establishment subject to income tax in the Kingdom, and based on paragraph (3/b) of Article (5) of the Double Taxation Avoidance Agreement between the Kingdom and Britain, on which both the Adjudication Circuit and the Authority relied, that the ... A permanent establishment has already stipulated that the actual presence in the Kingdom is required for the establishment of a permanent establishment, and that the agreement stipulates that the actual presence must be in the Kingdom and continue for a period of six months until it is subject to tax in it, and that the scope of work ... Under the contract of works outside the Kingdom with ... It includes detailed engineering and design services, design services, overseas procurement services, actual external procurement of equipment and materials from outside the Kingdom, construction management planning services, as well as other professional services provided at construction management contractors' offices outside the Kingdom, coordination visits or inspection visits to suppliers' work outside the Kingdom, and parts of front-end engineering and design work previously submitted to ... Overseas from outside the Kingdom, all work has been carried out by ... Outside the Kingdom and based on the confirmation of ... My staff has traveled... of the Kingdom from time to time to attend coordination meetings, which were held mainly in the offices of... Saudi Arabia and that the time period for these visits does not exceed (183) days during the year, and therefore the double taxation avoidance agreement signed between Saudi Arabia and Britain requires the physical presence of employees in Saudi Arabia for a specific period for the purpose of the permanent establishment, the condition that it did not meet... Thus, under the agreement, I do not have ... A permanent establishment in the Kingdom, and that the agreement requires the actual practice of business in the Kingdom through the physical presence in it, the practice of business should not be considered as if it took place in the Kingdom, where there is no... A permanent establishment in the Kingdom under the provisions of the Agreement, and that the Authority in April 2021 issued bulletin No. (...) Which clearly shows that the Authority has abandoned the concept of deemed permanent establishment (subject of the objection), where it is evident in the texts contained therein that actual presence in the Kingdom is the determining factor in establishing the existence of a permanent establishment for non-residents. The Authority's circular required the existence of a fixed place and actual presence to attract income from activities that the head office achieves in the Kingdom, and that the Authority used the phrase 'were it not for the existence of a permanent establishment in that country' which means requiring actual physical spatial presence in the Kingdom to create a permanent establishment. On

the practical level, for attributing income related to services, the condition of actual physical spatial existence at the permanent establishment's location in the country must be met, which does not apply to the case of..., and that attributing the income realized from activities of... Full or partial in the place where there is a fixed headquarters for the permanent establishment, which is the headquarters of... In the UK, therefore, this income cannot be subject again in the UK for the following two grounds: First reason: Double taxation is achieved as a result of subjecting the same income once in the UK and once in Saudi Arabia. Second reason: There is no fixed headquarters... The non-resident company in the Kingdom, if it does not have a permanent establishment, is therefore unable to assign any income to any tangible legal entity and not to impose income tax by association. The Taxpayer relied on the provisions of Article (5) of the Double Taxation Avoidance Agreement signed between the Kingdom and the Netherlands, where the conditions of the permanent establishment do not apply to the Taxpayer, whose period of doing business in the Kingdom did not exceed the period stipulated in the tax agreement, which is (183) days, and pointed out that the work performed by ... According to the contract signed with ... Do not make the company a permanent establishment in the Kingdom in accordance with the Saudi Income Tax Law and the Double Taxation Avoidance Agreement between Saudi Arabia and the United Kingdom, and therefore it is exempt from income tax, and the company reserves its right contained in the provisions of paragraph No. (5) of Article (66) of the Executive Regulations of the Income Tax Law, which stipulates that if the Authority delays in refunding the amounts proven to have been paid, the company shall be paid compensation of (1%) of the recovered amount for each (30) days delay after the lapse of (30) days from the request for refund until the date of response. With regard to the clause (compensation), the Taxpayer indicated that it reserves its right contained in the provisions of paragraph (5) of Article (66) of the Executive Regulations of the Income Tax Law, which stipulates that if the Authority delays in refunding the amounts that have been proven to be paid, the company shall be paid compensation of (1%) of the recovered amount for each (30) days of delay.

on Sunday, 21/07/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures of remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No.: (25711) and dated: 08 /04 /1445 AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible



because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and since it is regarding the Taxpayer's appeal on the clause (request for refund of withholding tax paid for a ... company) The Taxpayer claims to cancel the circuit's decision on this clause on the basis that the company (...) on its right to apply the agreement and recover withholding tax because it is not resident in the Kingdom. Whereas Paragraph (3/b) of Article (5) of the Double Taxation Avoidance Agreement between the Government of the Kingdom of Saudi Arabia and the Government of the United Kingdom of Great Britain and Northern Ireland stipulates: The phrase of the permanent establishment includes "the provision of services, including advisory services, by a project through other employees or workers employed by the project for this purpose, provided, however, that works of this type (for the same project or for a related project) continue in the country for a period or periods exceeding a total of 183 days during any period of twelve months", and based on Article (35) of the tax law, which states that: " In the event of conflict between the terms of an international treaty or agreement to which the Kingdom is a party and the articles and provisions of this Law, the terms of the international treaty or agreement shall apply, with the exception of the provisions of Article Sixty-Three of this Law relating to measures to combat tax avoidance." Paragraph (4) of Article (66) of the Executive Regulations of the Income Tax Law stipulates that: Any claims for restitution of amounts paid in excess in cases of objection or appeal shall be considered only after a final judgment has been issued confirming the entitlement of the Taxpayer to these amounts and a request has been submitted by him. "Based on the foregoing, and by reviewing the case file and the defenses and documents it was found that the dispute lies in the claim of the Taxpayer to recover the withholding tax and demands the application of the agreement between the State of Britain and the Kingdom of Saudi Arabia. The Taxpayer argues that the concept of the permanent establishment does not apply to him, as the agreement stipulates that the actual (physical) presence in the Kingdom must continue for a period of six months until it is subject to tax there. However, all works have been carried out by (...) Outside the Kingdom and that the employees have traveled to the Kingdom from time to time to attend the coordination meetings, and that the period of time for such visits does not exceed (183) days during the year, and where the Circuit found through reviewing the translated copies of the employment contract that the services are represented in the implementation of engineering works and project management services on the basis of the strength of the task of the facilities of the particular company that it wishes to design and establish and conduct the operational test on it in Ras Tanura, and since the services can be applied from outside the Kingdom, and the visits of the employees did not exceed (183) days, and the Authority did not provide otherwise, and there is no validity to the Authority's argument not to require the actual (physical) presence of its employees or individuals in the other clause, as according to the tax bulletin No. (2303001) issued on (17 May 2023 AD), it indicated that "the actual presence within the country for the performance of the relevant services is a prerequisite condition to determine whether the non-resident entity has its origin





Regarding the remaining clauses subject to the lawsuit, there is no fault with the Circuit in adopting the grounds of the decision under appeal without adding to them when it deemed that those grounds are sufficient without mentioning anything new, because in its endorsement of them with what those grounds contained, it is confirmed that it did not find in what was directed against the decision by way of appeals anything that deserves a response with more than what those grounds contained. Since this is the case, and it is established that the decision subject to appeal regarding the dispute concerning the clauses under appeal came in accordance with the valid grounds on which it was based and which are sufficient to support its judgment, as the Circuit that issued it undertook to examine the essence of the dispute therein and concluded regarding it with the result it reached in its operative part. Since this Circuit did not observe anything that calls for correction or comment regarding it in light of what was presented by way of defenses raised before it, this leads this Circuit to reject the Taxpayer's appeal and uphold the Resolution Circuit's decision subject to appeal in what it concluded as a result in the remaining clauses subject to the lawsuit, based on its grounds.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Acceptance of the appeal procedurally from the Taxpayer/ ... company, commercial register (...), unique number (...) against the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Dammam (IZD-2023-143920) issued in Case No. (W-2020-143920) regarding the denial of the refund of the 2012 AD withholding tax.

2- On the merits:

- a. Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (Request for refund of withholding tax paid for a company...).
- b. Rejection of the appeal and upholding of the decision of the Adjudication Circuit with regard to the clause (compensation).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-170825

Case No. IW-2023-170825

Keywords

Withholding Tax - Imposition of Additional Withholding Tax on Hypothetical Profit Distributions -  
Acceptance of Taxpayer's Appeal

Summary:

the Taxpayer's appeal against the decision of the Second Circuit of Income Tax Irregularities and Disputes in Riyadh (ISR-2022-1798), where its appeal is based on the clause (imposition of income tax on the basis of lump sum profit on contracts with a ... company (for the years 2016 to 2018), claiming the Authority's approval on the basis of the calculation provided, and the clause (imposition of additional withholding tax on hypothetical profit distributions), claiming that the permanent establishment paid the tax on the basis of the books of accounts it maintains regarding its contract with a company (...). WHEREAS, the Appellate Committee found that the Circuit concluded to modify the Authority's action to impose a withholding tax on hypothetical dividends based on the profit percentage (20%) and the fact that the Appellant is a company (...) provided proof of payment of withholding tax on its return. This means; accepting the Taxpayer's appeal and canceling the decision of the adjudicating circuit.

Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (1) of Article (63) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)
- Paragraph (3) of Article (67) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)

Facts:

the appeal filed on 19/01/2023 AD, from (...), National ID No. (...) In its capacity as an agent for the appellant company under the power of attorney issued by the city of (Brussels) and ratified by the official authorities in the Kingdom of Saudi Arabia and the lawyer's license No. (...), and the appeal submitted by the Zakat, Tax

and Customs Authority on 22/01/2023 AD, on the decision of the Second Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ISR-2022-1798) issued in Case No. (IW-2021-44392) related to the tax assessment for the years from 2015 AD to 2018 AD and the withholding tax, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

- 1- Rejection of the lawsuit regarding the income tax clause for the years 2015 AD to 2018 AD.
- 2- Cancellation of the Defendant's action in the clause of imposing the lump sum profit at a rate of 40% instead of 25% for the years from 2016 AD to 2018 AD, according to what was stated in the grounds.
- 3- Modify the Defendant's procedure regarding the clause of imposing additional withholding tax on the hypothetical distributions of profit, as stated in the grounds.
- 4- Proof of the end of the dispute in relation to the clause of taking into account an incorrect amount of the accelerated tax.
- 5- Rejection of the Plaintiff's objection to the difference in the method of calculation submitted by the Authority through e-mail.
- 6- Modify the Defendant's procedure regarding the delay fine clause, according to the grounds.

Whereas this decision was not accepted by the Taxpayer (the company...), it submitted an appeal regulation that was reviewed by the Circuit, where the Taxpayer's appeal lies on the clause (imposing additional withholding tax on the hypothetical distributions of profit), the Taxpayer explained that the Authority imposed a withholding tax of (5%) on the hypothetical dividends based on the gross profit that was applied by the Authority to the contract with the company..., where the permanent establishment pays the company's income tax due on the contract with the ... company on the basis of the books of accounts. Thus, the hypothetical dividends are calculated based on the books and accounts held by the permanent establishment regarding its contract with the company..., and the permanent establishment would also like to inform the esteemed committee that it has paid the withholding tax on the distribution of the hypothetical profits calculated based on the books and records held by the establishment, and in this regard, we kindly request the esteemed committee to direct the Authority to cancel the obligation of withholding tax imposed on the contract with the company...(based on the assumption of hypothetical profits of (25%) and to accept the withholding tax paid by the permanent establishment on the basis of the accounts to submit the declarations to the company... With regard to the Taxpayer's appeal on the clause (delay fine), the company would like to clarify that the delay fine should not be applied for the following grounds: Article (71) of the Executive Regulations of the Law stipulates the following: "2. The dues shall be considered final in the following cases: - A) The Taxpayer's approval of the assessment. b) The passage of the statutory date without the Taxpayer paying the dues due under its declaration. c) The expiry of the statutory date for objecting to the amended assessment made by the Authority. d) Issuance of a final decision by the primary

or appellate objection committees or the Board of Grievances. " The esteemed committee will note that the purpose of the above regulations is to impose a delay fine under paragraph (a) of Article (77) of the Income Tax Law and Article (68) of the Executive Regulations of the Law in the event of delay in the payment of the tax when it becomes final, whether after the Taxpayer accepts the assessment or the end of the objection procedures. The esteemed committee will be aware that the permanent establishment has submitted its objection to the Second Circuit and therefore no obligation is considered final yet. If there are any outstanding obligations, the delay penalties are due starting from the final date of the decision of the Adjudication Circuit, which is considered final and irrevocable. The disagreement between the permanent establishment and the Authority is not based on any law or the absence of any supporting documents, but is based on the basis of filing declarations. It is clear that what the Authority refers to is not stipulated in the regulations, and accordingly delay fines (if any) shall be applied since the date of the final decision of the Adjudication Circuit. With regard to the Taxpayer's appeal on the clause (imposition of income tax on the basis of gross profit on contracts with a ... company For the years from 2016 AD to 2018 AD, the Taxpayer explained that the company..., is a company duly registered with the Authority under the unique number: (...) As a "permanent establishment" in the Kingdom of Saudi Arabia, we would like to inform the esteemed committee that the permanent establishment has concluded several contracts in the Kingdom of Saudi Arabia, and the esteemed committee notes from the above that the above two contracts are supervised by two independent commercial departments in the permanent establishment. The two departments in the permanent establishment deal with different sectors/ markets/commercial customers and have different economies and profit margins. The Authority also approved the lump-sum profit in the fiscal year 2013 AD regarding the contract with ..., and the Authority issued its letter No. (4168/16/1434) dated 27/6/1434 AH (corresponding to 7/5/2013 AD), which provides its approval to the permanent establishment to pay corporate tax on the basis of lump-sum profit to submit declarations at the rate of (25%) of the lump-sum profit rate. The esteemed committee will also note that the approval letter submitted to the Authority pertains only to the contract with .... Thus, the permanent establishment submitted its tax return on its contract with ... On a gross profit basis of (25%) for the years under assessment. The declarations were submitted on the basis of the accounts of the contract with the ... company After the approval of the Authority on a lump sum basis to submit the declarations for the contract ... The defense department of the ... company In FY 2013 AD, the Company's Energy Circuit entered into a separate contract with...for the year 2014 AD. Since the approval of the arbitrary profits obtained in FY 2013 AD was related to a specific contract with ... Since the approval of the Authority is not in line with the nature and economics of the future business in the Kingdom of Saudi Arabia regarding the contract with the company... Accordingly, the company's energy department has chosen to proceed with the basis of calculation to submit its new contract with the company... In light of the background information and facts, the esteemed Committee will note the distinctive nature of contracts in the Kingdom of Saudi Arabia. Which, in turn, allows the permanent establishment to keep filing declarations on the basis of accounts, as the approval of the arbitrary profits



obtained by the permanent establishment is intended for its contract with ... Only, in addition to the above, we would like to inform the esteemed committee that the expenses attributed to the contract with a company...are costs that were mostly incurred in the Kingdom of Saudi Arabia (such as land supply of goods and payment for services provided by a resident of the Kingdom of Saudi Arabia). Thus, the permanent establishment was able to keep books and accounts regarding its contract with a company... Also, any supply of services from a non-resident entity to the permanent establishment due to the contract with a company...has been properly subject to withholding tax by the permanent establishment, and the esteemed committee notes that the objective of the income tax law stipulates that the Taxpayer, including a permanent establishment in the Kingdom of Saudi Arabia in general, must keep books and records in the Kingdom of Saudi Arabia and pay taxes according to its books kept in the Kingdom of Saudi Arabia. Consequently, nothing in the Saudi tax law required the permanent establishment in the Kingdom of Saudi Arabia to seek approval from the Authority to continue filing returns on the basis of the accounts as it is considered the default filing basis in the Kingdom of Saudi Arabia. The esteemed committee also notes that submission on the basis of calculations does not require any prior approval by the Authority. The lump sum profit is also applied in specific cases under the Saudi Income Tax Law, which does not apply in the case of a contract with a ... company, and in specific exceptional cases, the Authority allows the submission of a tax return on the basis of discretionary taxes or lump sum profit in the following cases, which do not apply in the case of a permanent establishment, despite the above, the permanent establishment intentionally notified the Authority of its new contract with a company...while submitting its tax return with the Authority. The esteemed committee will note that the basis of submission of the permanent establishment has been stated in the letters submitted to the Authority starting from the fiscal year 2014 AD. The permanent establishment did not hide any information about the authority. In fact, the Authority has annually issued tax certificates to the permanent establishment indicating its approval of the permanent establishment's filing of the tax return on the basis of accounts and gross profit to file the returns on its contract with ... . On this basis, the permanent establishment has been filing its tax returns and paying the company's income taxes in good faith based on the calculations to file declarations on its contract with the company... and on a take-profit basis to make representations regarding its contract with ... . In addition to the above, and in response to the opinion of the Adjudication Circuit that the permanent establishment did not provide information in its declaration regarding its contract with a company...on the basis of accounts as well as did not add it to its tax declaration on the basis of gross profit, this is considered incorrect, and as the esteemed committee notes that the permanent establishment has submitted its tax declaration based on the general form prescribed by the Authority (i.e. on the basis of accounts). The permanent establishment included as an amendment a tax return on the basis of lump sum profit that was calculated based on the lump sum profit basis for filing the returns. Accordingly, the permanent establishment has fully complied with the tax laws and regulations in the Kingdom of Saudi Arabia. Accordingly, the Taxpayer requests to accept its appeal and overturn the decision of the Adjudication Circuit on the clauses subject to its appeal.

This decision was also not accepted by the Authority. It submitted an appeal regulation that was reviewed by the Circuit. The Authority's appeal lies on the clause (delay fine). The Authority clarified that the fine was subject to the above clauses and was calculated in accordance with Article (77) of the Income Tax Law and Article (68) paragraph (1) of the Executive Regulations of the Income Tax Law, where a delay fine of (1%) is imposed for every thirty days of delay on unpaid tax differences. Accordingly, the Authority demands that its appeal be accepted and the decision of the Adjudication Circuit on the clause subject of its appeal is overturned.

on Monday, dated: 06/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are written in the minutes, via video communication in accordance with the procedures of remote video litigation; based on the provisions of clause (1) of Article 15 of the working rules of zakat, tax and customs committees issued by Royal Decree No: (25711) and dated: 08 /04 /1445 AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and with regard to the Taxpayer's appeal on the clause (imposition of additional withholding tax on the hypothetical distributions of profit), where the Taxpayer's appeal lies in the appeal on the dismissal of the adjudication Circuit's objection on the clause contrary to the dispute, as it claims that the permanent establishment paid the tax on the basis of the books of accounts it maintains regarding its contract with the company(...). based on Article (63) Paragraph (1) of the Executive Regulations of the Income Tax Law on: "A non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates: 5% dividend." Based on Article (70) of the Sharia Pleadings Law promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH, it is stated that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the case is filed, the substance of the case and the answer must be monitored before the agreement is recorded, provided that the origin of the case is within the jurisdiction of the Circuit,



even if the substance of the agreement is within the jurisdiction of another court or Circuit, provided that the merits of the case or some of it is among those agreed upon." Based on the above, it is clear from the statutory texts that the imposition of the withholding tax is related to the payment process and the like, such as the settlement between the accounts and the clearing, and since the Authority's procedure for imposing withholding tax on the estimated dividends resulted from the discretionary accounting of the Plaintiff, and where the decision of the Circuit ended in clause No. (1) related to the imposition of tax on the basis of lump sum profits on contracts with a company...for the years from 2016 AD to 2018 AD, in which the Circuit's decision ended to prove the end of the dispute, based on the Authority's leaving its appeal in relation to the clause in question, and by studying the outcome of the adjudication decision, it became clear that the Circuit of Classification reached an amendment to the Authority's procedure for imposing withholding tax on hypothetical distributed profits based on the profit rate (20%) and the fact that the appellant is a company (...) it provided proof of payment of the withholding tax on its return, which resulted in the circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit on this clause.

With regard to the Taxpayer's appeal on the clause (imposition of income tax on the basis of gross profit on contracts with a ... company For the years 2016 AD to 2018 AD, where the Taxpayer's appeal lies in the dismissal of its objection to the dispute clause, as it claims the approval of the Authority on the basis of the calculation submitted. Based on paragraph (2) of Article (16) of the Executive Regulations of the Income Tax Law related to the discretionary tax, which stipulates the following: "- Small activities with limited incomes whose activity does not require the maintenance of accounts or records, the Authority may account for them in a discretionary manner in accordance with what is specified in the fourth paragraph of this article." Based on the above, it is clear that the dispute lies in calculating the estimated profit on the project of a ... company Neglecting the accounts, as it becomes clear that the appellee is accounting on a discretionary basis for the project ... Only based on the request submitted by the appellant, and the request was studied by the Authority and it replied with approval that the percentage of revenues of the project ... The remaining amount is (9%) of the total contract value and was approved by the Appellee (Zakat, Tax and Customs Authority) and the approval to use the lump sum basis only on the remaining value of the contracts referred to in the application (contract ...) In the amount of (33,838,533) Saudi riyals (residual value), as for new contracts concluded with (Company...) The Appellant disclosed these contracts within its tax declaration for subsequent years (regular accounts) and obtained a certificate as a result of submitting its declaration, which indicates the Authority's knowledge and approval of the method of accounting of the company and the basis of submitting its declaration, and based on the letter submitted by the Taxpayer on 16/02/2017 AD, which included a request to extend the accounting method of arbitrary profits for contracts (...) For the year 2016, the remainder of it represents (11%) only and is expected to be completed during the year 2017. Therefore, upon completion of the existing contracts, the Taxpayer will be charged based on the contracts shown in its regular accounts, and this is not affected by the Authority's payment in its memorandum that it is not permissible to combine two grounds to submit the declaration because it



provided an exception to the Taxpayer based on the letter issued by it approving the accounting in the discretionary method only on the remaining amounts of the contract ... Which represents (9%), and what was addressed by the Adjudication Circuit that the Taxpayer has to choose the basis of calculation, it does not apply to the case of the appellant because the authority studied the appellant's application and granted the appellant an exception to account for (3) contracts concluded with ... In gross profit, while the contracts concluded with a company...were declared within the tax return submitted and approved by the Authority, which ends with the Circuit accepting the Taxpayer's appeal and canceling the decision of the Segregation Circuit on this clause.

with regard to the Taxpayer's and the Authority's appeal on the (delay fine) clause, and based on the text of paragraph (a) of Article 77 of the Income Tax Law promulgated by Royal Decree No. M/1 dated 15/01/1425 AH, which stipulates the following: "In addition to the fines mentioned in Article Seventy-Six of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay, and this includes the delay in paying the tax required to be withheld and the accelerated payments, calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the executive regulations of the income tax law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which states the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these regulations, including cases that are contested, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on Article (70) of the Sharia Pleadings Law promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH, it is stated that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the case is filed, the substance of the case and the answer must be monitored before the agreement is recorded, provided that the origin of the case is within the jurisdiction of the Circuit, even if the substance of the agreement is within the jurisdiction of another court or Circuit, provided that the merits of the case or some of it is among those agreed upon." Based on the foregoing, it is clear from the statutory texts that the delay fine is imposed on the Taxpayer as a result of the delay in paying the tax due on him, and since clause No. (1) regarding (imposing the lump sum profit at a rate of 40% instead of 25% for the years from 2016 AD to 2018 AD) and clause No. (2) regarding (imposing the additional withholding tax on the hypothetical distributions of profit), the operative part of the Circuit has ended in accepting the abandonment of the litigation and canceling the



decision of the Adjudication Committee in imposing income tax and withholding tax resulting from the discretionary assessment, which results in the cancellation of the delay fine, which ends with the amendment of the decision of the Adjudication Circuit regarding the appeal of the parties on this clause.

Regarding the Authority's appeal regarding the clause (imposing the lump sum profit at a rate of 40% instead of 25% for the years from 2016 AD to 2018 AD), and the clause (imposing the additional withholding tax on the hypothetical distributions of profit), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the case is set, the content of the case and the answer must be monitored before the agreement is recorded, taking into account that the origin of the case is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or Circuit, provided that the merits of the case or some of it is among those agreed upon." Based on the foregoing, and where this Circuit has proven the Authority's request to leave the appeal as stated in the letter issued by the Authority in the supplementary memorandum, which includes the following: "The Authority wishes to inform the Honorable Circuit that it has left its appeal with regard to the above clause specifically and the procedures resulting from its appeal for this clause as per the terms of reference of the decision of the Disposition Circuit..." therefore, the Circuit shall accept the abandonment of the litigation.

With regard to the Taxpayer's appeal regarding an clause (an incorrect amount as amounts subject to withholding tax by the Authority for the years from 2015 AD to 2018 AD), and since there is no implication on the Circuit to take into account the grounds for the appealed decision without adding to it whenever it estimated that these grounds dispense with the income of any new, because in supporting them with what these grounds carried, it is confirmed with him that they did not find in the appeals against the decision what is worth responding to more than what was included in those grounds, and since it was established that the decision in question regarding the dispute regarding the clauses under appeal was consistent with the justifiable grounds on which it was based and sufficient to carry its judiciary, as the issuing Circuit examined the location of the dispute and concluded with its conclusion in its operative part, and where this Circuit did not notice what warranted redress or comment on it in the light of the arguments raised before it, which this Circuit ends up rejecting the appeal of the Taxpayer and supporting the decision of the Taxpayer

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:



## Decision:

First: Accepting the appeal procedurally from the Taxpayer/ Company..., commercial registration (...) , unique number (...) the appeal filed by the Zakat, Tax and Customs Authority against the decision of the Second Circuit for the Resolution of Income Tax Violations and Disputes in Riyadh (ISR-2022-1798) issued in Case No. (IW-2021-44392) related to the tax assessment for the years 2015 AD to 2018 AD and the withholding tax.

Second: On the merits:

1- Accepting the abandonment of litigation with regard to the Authority's appeal on the clause (imposing the lump sum profit at a rate of 40% instead of 25% for the years 2016 AD to 2018 AD).

2- Regarding the parties' appeal on the clause (imposition of additional withholding tax on hypothetical profit distributions):

a. Accepting the abandonment of litigation with respect to the Authority's appeal against the additional withholding tax on hypothetical dividend distributions.

b. Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (imposition of additional withholding tax on hypothetical profit distributions).

3- Amending the decision of the Adjudication Circuit regarding the parties' appeal on the delay fine clause.

4- accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (imposing income tax based on the net profit on contracts with a ... company for the years 2016 AD to 2018 AD).

5- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (incorrect amount as amounts subject to withholding tax by the Authority for the years 2015 AD to 2018 AD).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-169932

Case No. W-2023-169932

### Keywords

Withholding Tax - Imposition of Withholding Tax on services provided from the headquarters - Acceptance of the Authority's appeal

### Summary:

the Zakat, Tax and Customs Authority's appeal against the decision of the Third Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (ITR-2022-6135), where its appeal lies on the clause (delay fine) in that it imposed the penalty on the tax differences not paid within the statutory deadline, and the clause (Imposing a withholding tax on services provided by the head office) in that it imposed a withholding tax on the charging of expenses made by the head office in the data included in the audited financial statements. the Appellate Committee found that the Taxpayer did not provide documents proving otherwise, and the fact that the settlement with the invested funds (the capital of the branches of foreign companies) is an actual payment supports the Authority's action and does not negate it. Consequently, the authority's appeal is accepted, and the decision of the adjudication committee is canceled.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425 AH](#)
- Paragraph (1) of Article (63) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425 AH](#)

### Facts:

The submitted appeal was heard on: 15/01/2030 AD, from/the Zakat, Tax and Customs Authority, on the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ITR-2022-6135) issued in Case No. (W-2021-50770) related to the assessment of withholding tax for the years



2017 AD, 2018 AD and 2020 AD, in the lawsuit filed by the appellant against him against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

Accepting the objection of the Plaintiff/ branch of a ... company (Commercial Registration No . ...), on the decision of the Defendant/ ZATCA procedurallyl terms, and the cancellation of the Defendant's action in substantive terms.

Whereas this decision was not accepted by the appellant (Zakat, Tax and Customs Authority), it submitted an appeal regulation that was reviewed by the Circuit, where its appeal lies with regard to the clause (imposing a withholding tax on the services provided by the head office), the Authority demands the cancellation of the Circuit's decision on this clause on the basis of: First/ Regarding the irregularity of imposing withholding tax because there is no actual payment, settlement or set-off: At the outset, the Authority clarifies that after referring to the financial statements for the year ended 31/3/2017 AD and the year ended 31/3/2018 AD, it is clear that the chartered accountant showed the clause in the financial statements as amounts due to the head office: They are represented in the payment of expenses and payments on behalf of the head office, and they represent transactions with the head office. With reference to the financial statements for the year ended 31/3/2020 AD, it became clear that they were included as invested funds. By reviewing note No. (5) of the notes to the financial statements for 2017 AD and beyond years, it is clear that these amounts are included under the name of dues to the head office – transactions with related parties. During 2020 AD, the dues of the head office were settled to become investments under the following accounting entry: From H / dues of the head office to H / investments of the head office, and under this restriction or reclassification, the company is discharged from the dues of the head office because they have become investments of the head office, which exercises its powers over them, and it has the right to take any decisions it deems necessary on them and they are no longer dues owed by the branch, which makes this incident a payment incident in which the tax must be withheld. the Taxpayer argued that the additional investment is not considered as a payment, but it is clear that there are services and management fees with the parent company, which instead of paying for it, it is reinvested, and therefore it is clear that it is a set-off between the accounts and this is confirmed by the Income Tax Law and its Executive Regulations, as it is clear that paragraph (a) of Article (68) of the Income Tax Law and paragraph (1) of Article (63) of the Executive Regulations. Second: Regarding the classification of the amounts paid as management fees instead of administrative services: The issuing Circuit rejected the above clause because it is related to the first part, with regard to the irregularity of imposing withholding tax because there is no actual payment, settlement or clearing process, and since this clause is related to the first part and what is related to it takes its judgment on it, the Authority requests to support its action in accordance with the grounds and legal grounds explained above. With regard to the clause (delay fine), the Authority clarifies that the delay fine has been imposed on the unpaid tax differences on the regular date based on Article No. (77), Paragraph (A) of the Income Tax Law, which stipulates : In addition to the penalties mentioned in Article seventy-six of

this Law and in paragraph (b) of this Article, the Taxpayer must pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay. This includes delays in paying withholding tax and advance payments, calculated from the tax due date to the payment date. Also, based on Article (68) paragraph (1/b) of the Executive Regulation of the Income Tax Law, which states: (In addition to the penalties mentioned in the previous article, (1%) of the unpaid tax is added for every thirty days of delay in the following cases, including what is mentioned in paragraph: b- Delay in paying tax due under the circuit's assessment), which is calculated from after the regulatory date for filing the return and not from the assessment date. Moreover, the decision of the First Adjudication Circuit in Riyadh under appeal has indeed contradicted what was established by the jurisprudence of the First Appellate Circuit for adjudicating income tax violations and disputes, according to Appeal Decision No. (IR-2020-28) in Case No. (ZIW-2018-1657), which included in its decision rationale: "Whereas it is established that the penalty is due from the tax due date until the payment date, and whereas the nature of the dispute between the parties is documentary in the disputed clauses and did not result in a considerable disagreement in interpreting the regulatory texts, and whereas the tax due date is the date of knowledge thereof or presumed knowledge thereof, so knowledge is presumed from its due date, accordingly the Circuit determines the correctness of imposing penalties on the clauses for which the appeal was rejected from the regulatory tax due date." Since these clauses, from the Authority's perspective, are correct and remain valid and their basis has not fallen, on what regulatory grounds did the Circuit contradict established practice, which renders the Circuit's conclusion contrary to regulatory requirements. The Authority maintains its position and the correctness of its procedures from a legal standpoint and demands acceptance of its appeal and annulment of the First Adjudication Circuit's decision regarding the clauses under appeal.

on Wednesday, 21/02/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video conferencing in accordance with the procedures for remote video litigation; based on the provisions of Clause 2 of Article 15 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No: (26040) and dated: 21/04/1441 AH; after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and as for the Authority's appeal on the clause (imposing a withholding tax on the services provided by the head office), and where the Authority's appeal lies in its imposing a withholding tax on the expenses shipments made by the head office in the statements contained in the audited financial statements, and based on paragraph No. (1) of Article (63) of the Executive Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, which stipulates the following: "1- A non-resident shall be subject to tax on any amount received from any source in the Kingdom and the tax shall be deducted from the total amount according to the following rates: 3 - Management Fees .... by 20%." paragraph (3) of Article (57) of the Executive Regulations of the Income Tax Law stipulates: "In the event that the Taxpayer is unable to prove the validity of the income, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the Authority's view in light of the circumstances and facts related to the case and the information available to the Authority." In accordance with the above, it is clear from the above statutory provisions that the imposition of withholding tax is assessment ed to the existence of the actual payment process and its equivalent such as settlement between accounts and clearing, and by reviewing the Authority's viewpoint, it is clear that it subjected the amounts in dispute from the date of the accounting entry on the basis that they represent services provided by the head office and associated entities and that the accounting entry is considered a settlement between accounts upon reviewing the documents attached to the case file, it is clear from Note (5) of the notes to the financial statements for 2017 AD and subsequent years that these amounts are included under the name of receivables for the head office - transactions with related parties, and during 2020 AD, the receivables for the head office were settled to become investments under the following accounting entry: as the Taxpayer did not provide documents proving otherwise, and as the settlement with the invested funds (the capital of the branches of foreign companies) is an actual payment that supports the Authority's action and does not negate it, the Circuit concludes to accept the Authority's appeal and cancel the decision of the Adjudication Circuit on this clause.

Regarding the Authority's appeal on the clause (delay fine), and where the Authority's appeal lies in its imposition of the delay fine on the unpaid tax differences on the regular date, and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes delays in paying the tax required for withholding and accelerated payments, calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment . " E- Delay in paying the required withholding



tax specified within ten days of the following month in which payment was made to the beneficiary as stated in Article Sixty-Eight of the Law, and the responsibility for its payment falls on the entity obligated to withhold. Based on the foregoing, it is evident from the above statutory texts that the delay penalty is calculated from the date the tax becomes due on the Taxpayer until the date of payment. However, upon reviewing the case file, it appears that the outstanding unpaid tax resulted from adjustments to clauses that are not governed by clear statutory texts, where the penalty resulted from reclassification or settlement of accounts between the company's branch and the head office. The Circuit concludes by partially accepting the Authority's appeal and amending the adjudication circuit's decision on this clause, by not imposing the delay penalty on the unpaid withholding tax, provided that the penalty be calculated from the date of notifying the Taxpayer of the decision issued in this case. On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Acceptance of the appeal procedurally of the appellant/Zakat, Tax and Customs Authority, against the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ITR-2022-6135) issued in Case No. (W-2021-50770) related to the assessment of withholding tax for the years 2017 AD, 2018 AD and 2020 AD.

2- On the merits:

a- Accepting the Authority's appeal and annulling the decision of the Decision Circuit regarding the clause (imposing a withholding tax on services provided from the main center).

b- Accepting the Authority's appeal in part and amending the decision of the Adjudication Circuit with regard to the (delay fine) clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-170658

Case No. W-2023-170658

### Keywords

Withholding Tax - Technical and Advisory Services – Acceptance of Taxpayer Appeal

### Summary:

The Taxpayer's objection to the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2487) related to the tax assessment for the month of June 2017 AD. Whereas, the Taxpayer's appeal on the clause (technical and advisory services (Oman)) lies in the fact that the amounts are not subject to withholding tax as the works were carried out outside the Kingdom. Whereas, it was proven to the Appeal Committee that the Taxpayer declared these services within the withholding tax return and submitted the withholding tax return for the month of 6 in 2017 AD. This resulted in the partial acceptance of the Taxpayer's appeal in relation to the clause of technical and advisory services, an amount of (1,101,267) riyals, and the amendment of the decision of the Adjudication Circuit of this clause.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (1) of Article (63) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)
- Paragraph (a) of Article (68) of [The Sharia Procedure Law promulgated by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)

### Facts:

The submitted appeal was heard on: 18/01/2023 AD, from/ ... Iqama No. (...) In its capacity as a legal representative of the appellant company's branch, the First Circuit's decision to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2487) issued in Case No. (W-2021-83125)



related to the tax assessment for the month of June 2017, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

- 1- Rejection of the Plaintiff's objection to the withholding tax clause.
- 2- Rejection of the Plaintiff's objection to the fines clause.

Whereas this decision was not accepted by the Taxpayer (branch of a ... company Ltd.), so it submitted an appeal statement that was reviewed by the Circuit, where its appeal lies with regard to the clause (technical and advisory services (Oman)), the Taxpayer explains that the Authority has requested a statement of account for the relevant party – a ... company Ltd. – Head Office – then concluded that these amounts are subject to expenses paid to a non-resident party for works carried out inside the Kingdom. The above amounts were as follows:

Rental of equipment (4,352,000) Saudi riyals, engineering consultancy (1,200,000) Saudi riyals. The Authority did not request copies of the contracts or any documents supporting these amounts. That the expenses of engineering consultancy and equipment rental were made by a non-resident party for projects outside the Kingdom and achieved revenues from outside the Kingdom, and therefore these amounts are not subject to withholding tax as the works were carried out outside the Kingdom. Accordingly, it demands the acceptance of its appeal and the reversal of the decision of the Adjudication Circuit in the clause subject to its appeal.

on Monday, 12/02/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video conferencing in accordance with the procedures for remote video litigation; based on the provisions of Clause 2 of Article 15 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441 AH; after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and as for the Taxpayer's appeal on the clause (technical and advisory services (Oman)), and where the Taxpayer's appeal lies in the fact that the amounts are not subject to withholding tax, as the works

were carried out outside the Kingdom, and based on paragraph (a) of Article (68) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH, which stipulates the following: "A. Every resident, whether Taxpayer or non-Taxpayer under this Law, and the permanent establishment in the Kingdom of a non-resident, who pays an amount to a non-resident from a source in the Kingdom must withhold tax from the amount paid in accordance with the following rates: 6- Any other payments specified by the Regulation...", and based on Article (5) of the Income Tax Law, which stipulates the following: "Income shall be deemed to be derived from a source in the Kingdom in any of the following cases: 7- Amounts for services paid by a resident company to its head office or to an associated company ", and based on paragraph No. (1) of Article (63) of the Executive Regulations of the Income Tax Law, which stipulates the following: "1- A non-resident shall be subject to tax on any amount received from any source in the Kingdom and the tax shall be deducted from the total amount according to the following rates: - Royalty or royalty, payments for technical or consulting services or international telephone communication services paid to the head office or an associated company.... rights (15%) - Technical or consulting services or international telephone communication services other than what is paid to the head office or an associated company, rent, air tickets or air or sea freight, distributed profits, loan proceeds, insurance or reinsurance premium.... At a rate of (5%) "and based on the foregoing, and with regard to technical and advisory services in Oman, it is clear that the Taxpayer stated those services within the withholding tax declaration. The Taxpayer submitted the withholding tax declaration for the month of June, 2017 AD, which ends with the Circuit partially accepting the Taxpayer's appeal in relation to the clause of technical and advisory services amounting to (1,101,267) riyals and amending the decision of the Adjudication Circuit this clause.

with regard to the Taxpayer's appeal regarding the clause (Short-term obligations), the Circuit has no fault in adopting the grounds for the decision under appeal without adding to them when it determines that these grounds make it unnecessary to introduce anything new, because in supporting the decision with the content of these grounds, it is clear that the Circuit did not find any objections to the decision that merit a response beyond what is contained in these grounds, and whereas it is evident that the decision under appeal regarding the disputed clauses was consistent with the valid grounds on which it was based and sufficient to support its decision since the issuing Circuit scrutinized the dispute and reached the conclusion it reached in the operative part of the decision, and since this Circuit did not notice any reason to appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject the Taxpayer's appeal and uphold the decision of the Adjudication Circuit in its conclusion on the clause (Short Term Obligations), taking into account its grounds.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:



### Decision:

1- Accepting the appeal procedurally of the Taxpayer's ... Commercial Registration No. (...), unique number (...), against the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2487) issued in Case No. (W-2021-83125) related to the tax assessment for the month of June 2017 AD.

2- On the merits:

(a) Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (services paid to the head office (Bahrain)).

(b) Accepting the appeal of the partially assigned person and amending the decision of the Adjudication Circuit in relation to clause (technical and advisory services (Oman)).



## Salaries and Insurances



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-170868

Case No. I-2023-170868

Keywords

Income Tax -Salaries and Insurance - Employee Benefits -Acceptance of Taxpayer Appeal

Summary:

The Taxpayer's objection to the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR- 2022-6294), where its appeal against the clause (delay fine) lies in its payment of the original tax amounts according to the Authority's assessment ing, and the clause (employee benefits) in its submission of the work regulation allocated in its work organization preparation regulation. Whereas, the Appeal Committee has established that the dispute between the two parties is a documentary dispute, and whereas the Taxpayer submitted documents proving that these expenses were incurred. Consequently; accepting the Taxpayer's appeal and canceling the decision of the adjudication authority.

Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425 AH](#)

Facts:

The submitted appeal was heard on: 19/01/2023 AD, from/ ... National ID number (...) as agent for the appellant company under Agency No. (...) And the lawyer's license No. (...), on the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6294) issued in Case No. (I-2021-53140) related to the tax assessment for the year 2018 AD, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

Acceptance of the Plaintiff's objection/ ... company , Commercial Register No. (...) the decision of the Defendant/Zakat, Tax and Customs Authority is upheld procedurally and rejected on the merits.

Whereas this decision was not accepted by the Taxpayer (the ... company), it submitted an appeal list that was reviewed by the Circuit, where its appeal lies with regard to the clause (employee benefits), the Taxpayer explains that the Authority has conducted an examination for the year in question. During the examination process, the Authority requested the submission of the work organization list

approved by the Ministry of Human Resources ("the Ministry") to verify the validity and compliance of employee benefits expenses, which is what the company provided. However, the Authority claimed that the work regulation submitted by the company was presented on law firm letterhead, indicating that the Plaintiff had modified the work regulation - this is an entirely incorrect claim. This regulation was approved by the Ministry of Human Resources, and any modification without approval from the competent authority is not recognized at all and would constitute forgery of official documents, which neither the Plaintiff nor the law firm could possibly commit under any circumstances. The Authority maintained its procedure of not approving the mentioned employee benefits, despite the fact that approval of regulations by establishments comes in two options: the standard regulatory framework and the customized work regulation. The company did not modify or submit a non-final work regulation, but rather used the customized work regulation option in preparing its own work organization regulation, which enables companies to add special terms and conditions for their employees that are not available in the standard work regulation. The regulation submitted by the Taxpayer (despite being prepared and approved according to regulatory procedures) was considered by the Authority and the adjudication committee as a modified and non-final regulation solely because it was submitted on law firm letterhead, without verifying the options or conditions for issuing and approving work organization regulations for companies according to the Executive Regulation of the Labor Law and the procedures followed in this regard by the Ministry of Human Resources. Regarding the clause (delay fine), the Taxpayer clarifies that he has paid the principal tax amounts according to the Authority's assessment under objection, and since the Authority has canceled the related penalties according to the Authority's initiative, mentioning the grounds for objecting to the penalties becomes pointless. He demands acceptance of his appeal and annulment of the adjudication circuit's decision regarding the clauses subject of his appeal.

on Monday, 26/02/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video conferencing in accordance with the procedures for remote video litigation; based on the provisions of Clause 2 of Article 15 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441 AH; after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

## Grounds:



Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and with regard to the Taxpayer's appeal on the clause (employee benefits), where the Taxpayer's appeal lies in its submission of the labor regulation allocated in the regulation of preparing its work organization, and based on paragraph No. (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, regarding the expenses that may be deducted to determine the taxable income, which stipulates that: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. (d) It is not of a capitalist nature". Based on the above, and since the dispute between the two parties is a documentary dispute, and since the Taxpayer submitted the documents proving that these expenses were incurred, the circuit ends up accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit in this clause.

With regard to the Taxpayer's appeal on the clause (delay fine), and where the Taxpayer's appeal lies in its payment of the original tax amounts according to the Authority's assessment. Based on paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which states: "In addition to the fines mentioned in Article Seventy Six of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay, and this includes the delay in paying the tax required to be withheld and the accelerated payments, calculated from the date the tax is due to the date of payment." Accordingly, since the decision of this circuit in the first clause ended with the acceptance of the appeal and the cancellation of the decision of the adjudication circuit, and since the dependent is a follower, the circuit ends with the acceptance of the Taxpayer's appeal and the cancellation of the decision of the adjudication circuit in this clause and the determination of the delay fine for the loss of its origin.

on the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:



### Decision:

1- Acceptance of the appeal procedurally, submitted by / ... Company Commercial Registration No. (...), unique number (...), against the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6294) issued in Case No. (I-2021-53140) related to the tax assessment for the year 2018 AD.

2- On the merits:

(a) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (employee benefits).

b- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the (delay fine) clause.





Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-171899

Case No. I-2023-171899

Keywords

Income Tax -Salaries and Insurances - Salary Differences - Acceptance of Taxpayer Appeal

Summary:

The Taxpayer's objection to the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6301), where its appeal lies on the clause (delay fine) in the Authority's imposition, and the clause (basic salary differences and housing allowance for the year 2017 AD) in the company providing the Authority with the details of the clause of basic salary differences and housing allowance. Whereas, the Appeal Committee established that the Taxpayer submitted the supporting documents by attaching a report from a chartered accountant in which it explained all the differences and allowances, including education, insurance and transportation allowance. This means; accepting the Taxpayer's appeal and canceling the decision of the adjudicating circuit.

Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)
- Paragraph (3) of Article (67) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)

Facts:

The appeal submitted on 26/01/2023 AD, by/ ..., ID No. (...), in its capacity as a legal representative of the appellant company under the Commercial Register, against the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6301) issued in Case No. (I-2022-96973) related to income tax for the year 2017 AD, was considered in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

accept the Plaintiff's objection..... , Commercial Register No. (...) the decision of the Defendant/Zakat, Tax and Customs Authority is upheld procedurally and rejected on the merits.

Whereas this decision was not accepted by the Taxpayer (...), the Taxpayer submitted an appeal regulation that was reviewed by the Circuit, where the appeal of the Taxpayer lies on the clause (basic salary differences and housing allowance for 2017 AD in the amount of 590,736.7 riyals), the Taxpayer confirms that it provided the Authority with the details of the basic salary differences and housing allowance clause and provided screenshots for all years of the Plaintiff's file for social insurance. The Taxpayer also objects to the Authority's procedure for comparing salaries according to insurance for 2017 AD with the same amount for 2016 AD. The Taxpayer also submitted additional documents to prove the correctness of its submission through the audited financial statements in addition to the statement submitted by the legal accountant of the differences in salaries and wages between the accounts of the Plaintiff and the social insurance registrar for the year 2017 AD, and the differences in salaries and wages between the accounts of the Plaintiff and the social insurance registrar (240,104). The Taxpayer also has no objection in the event that the Authority requests a field examination to take each person With regard to the clause (delay fine for the year 2017 AD), the Taxpayer requests the cancellation of the income tax amendment (assessment ing the Authority) and the late payment fines, and demands the acceptance of its appeal and the reversal of the decision of the Adjudication Circuit.

on Wednesday, 08/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No: (25711) and dated: 08 /04 /1445 AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and with regard to the Taxpayer's appeal on the clause (basic salary differences and housing allowance for 2017 AD in the amount of 590,736.7 riyals), where the Taxpayer's appeal lies in the company providing the Authority with the details of the basic salary differences and housing allowance clause, and based on paragraph No. (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by

Ministerial Decision No. (1535) dated 11/06/1425 AH, regarding the expenses that may be deducted to determine the taxable income as follows: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. (d) It is not of a capitalist nature". Based on the foregoing, the Circuit found that the Taxpayer submitted the supporting documents by attaching a report from a chartered accountant in which it clarified all the differences and allowances, including education, insurance and transportation allowance, which ends with the Circuit accepting the Taxpayer's appeal and canceling the decision of the Classification Circuit in this clause.

With regard to the Taxpayer's appeal on the clause (delay fine for the year 2017 AD), where the Taxpayer's appeal lies in the Authority's imposition of the delay fine, and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes delays in paying the tax required for withholding and accelerated payments, calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the Law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these Regulations, including cases that are disputed, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on the above, and since the Circuit concluded in the first clause (the difference in basic salaries and housing allowance for 2017 AD in the amount of 590,736.7 riyals) to accept the Taxpayer's appeal and cancel the decision of the Adjudication Circuit, and since this clause is affiliated with the first clause, and since the delay fine resulted from that, what is related to it takes its judgment, which ends with the Circuit partially accepting the Taxpayer's appeal and amending the decision of the Adjudication Circuit in this clause.

Regarding the Taxpayer's appeal on the clause (basic salary difference and housing allowance for 2017 in the amount of (240,104) riyals, and based on paragraph No. (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, regarding the expenses that may be deducted to determine the taxable income as follows: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls

are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. (d) It is not of a capitalist nature". Based on the above , and since the Taxpayer is demanding the adoption of differences in favor of the authority shown in the report of the chartered accountant, and the authority has calculated and taken the difference between the basic salary and the housing allowance in the statement and the basic salaries in the amount of (830,840.70) riyals, and by reviewing the attached documents, the circuit found that what the Taxpayer is demanding according to the reports of the chartered accountant, and found that the difference reached by the chartered accountant is (240,104) riyals, and that what the authority added in its response note is (830,840.70) riyals, which ends with the end of the dispute between the Taxpayer and the authority by accepting the Taxpayer is (240,104) riyals in this clause.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

First - Acceptance of the appeal in the form of the assigned applicant/ ... Commercial Registration No. (...), unique number (...), against the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6301) issued in Case No. (I-2022-96973) related to income tax for the year 2017 AD.

Second - On the merits:

1-Regarding the Taxpayer's appeal on the clause (basic salary difference and housing allowance for 2017 AD):

A- Proof of the end of the dispute regarding the Taxpayer's appeal on the clause (basic salary difference and housing allowance for 2017 AD) in the amount of (240,104) riyals.

B- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (basic salary difference and housing allowance for the year 2017 AD in the amount of 590,736.7 riyals).

2- Accepting the appeal of the partially Taxpayer and amending the decision of the Adjudication Circuit regarding the clause (delay fine for the year 2017 AD).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-170449

Case No. I-2023-170449

Keywords

Income Tax -Salaries and Insurance - Salaries and Wages - Acceptance of Partially Assigned Appeal

Summary:

The Taxpayer's objection to the decision of the First Circuit for Adjudication of Income Tax Violations and Disputes in Jeddah Governorate No. (IZJ-2022-2486), where its appeal lies on the clause (delay fine) that the fine should not be imposed because the Authority has carried out an incorrect procedure for the clauses previously described, and the clause (salaries and wages for 2016 AD) (a) salaries of new employees), as the Taxpayer pays that part of it is under trial employees in the amount of (84,000) riyals and new employees who were added to the social insurance law later in the amount of (172,923) riyals. Whereas, it has been proven to the Appeal Committee that the Taxpayer submits a clear statement of the names of employees and the salary expenses, and also submits a sample of checks paid to employees that match the amounts and names. With regard to new employees who were added to the social insurance law later in the amount of (172,923) riyals, and after reviewing the case file, it was found that the Taxpayer did not submit the documents supporting its objection. The result of this is to partially accept the Taxpayer's appeal and amend the decision of the Adjudication Circuit in this clause regarding the salaries of new employees in the amount of (84,000) riyals.

Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (a) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)

## Facts:



the appeal filed on 17/01/2023 AD from ..., National ID No. (...) was considered In its capacity as the director of the appellant company's branch, the First Circuit's decision to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2486) issued in Case No. (Z-2021-72655) related to the tax assessment for 2016 AD, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

1- Rejection of the Plaintiff's objection to the salaries and wages clause.

2- Rejection of the Plaintiff's objection to the delay fines clause.

since this decision was not accepted by the Taxpayer (Company...), it filed a list of appeals, which included the following summary:

The Taxpayer objects to the decision of the adjudication circuit under challenge, claiming that regarding the clause (salaries and wages clause for 2016 AD), the Circuit's decision to rely on the Social Insurance certificate as a conclusive and decisive means to determine the applicability of the controls of paragraph (1) of Article (9) of the regulation concerning expenses that may be deducted to determine income subject to income tax is a decision that cannot be relied upon legally and contradicts correctness. The Taxpayer points out whether audited financial statements by a third party and neutral entity are also a stronger, more comprehensive, and more important means to prove verification of the validity and fairness of actual salary expenses charged to accounts. The Social Insurance law has specific and independent controls and has sanctions and penalties in case of non-compliance. Its controls are based on the cash payment basis and not the accrual basis followed according to accounting standards and auditing standards adopted in the Kingdom for recording expenses and obligations incumbent upon the Taxpayer. The Taxpayer indicated that he submitted a statement explaining the classification of financial statements and tax return, and a file with reconciliations between the Social Insurance certificate and salary and wage expenses recorded in the books and their supporting documents. In light of this, a distinction must be made between the Social Insurance law, which should not be relied upon in the presence of evidence that has direct and independent connection to verify the applicability of the controls of paragraph (1) of Article (9) of the Executive Regulation of the Income Tax Law in accordance with what is disclosed in the tax return. Therefore, the accounting documents and reconciliations submitted for the purpose of clarifying the grounds for differences between what is recorded in the Social Insurance law and what is recorded in the company's accounting books, where the payment and accrual facts are verified through bank payments and daily entries, which are among the main and most important evidence for their direct connection in confirming the validity and fairness of salary and wage expenses. The Taxpayer maintains the validity of his objection, which consists of the right to rely on the evidence and proofs recorded in the case file. With regard to the clause (delay fine for 2016 AD), the Taxpayer claims that the fine should not be imposed because the



Authority has carried out an incorrect procedure for the clauses previously described. The Taxpayer submitted, in good faith, an income tax return and paid the tax due on the due date. Accordingly, the Taxpayer demands the reversal of the decision of the Adjudication Circuit subject to the appeal for the above grounds.

on Thursday, 08/02/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes met via videoconference in accordance with the procedures for remote videoconferencing; based on the provisions of Clause 2 of Article 15 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441 AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit did not find it necessary for the parties to the appeal to be present, the Circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request is accepted procedurally, as it was submitted by a person with standing, and within the statutory period prescribed for its conduct.

On the merits, and since it is with regard to the Taxpayer's appeal regarding the clause (salaries and wages for 2016 AD), and where its appeal lies that a distinction must be made between the social insurance law that should not be relied upon in light of the availability of evidence that has a direct and independent assessment to verify the applicability of the controls of paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law in accordance with what is disclosed in the tax return. Therefore, the accounting documents and settlements submitted for the purpose of clarifying the grounds for the differences between what is recorded in the social insurance law and what is recorded in the company's accounting books. The fact of payment and entitlement is achieved by paying the banks and the daily restrictions that are considered one of the main and most important clues for their direct assessment in confirming the validity and fairness of the salary and wages expenses. The Taxpayer maintains the validity of its objection, which is the right to rely on the clues and evidence deposited in the lawsuit file.

A) Salaries of new employees in the amount of (256,923) riyals: based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, concerning the expenses that may be deducted to determine the taxable income as follows: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income.

c. It must be related to the tax year. (d) It is not of a capitalist nature". Based on the above, and where the Taxpayer pays that part of them are probationary employees in the amount of (84,000) riyals and new employees were added to the social insurance law later in the amount of (172,923) riyals, and after reviewing the case file and the documents and defenses it contains, it was found that the Taxpayer submitted a statement showing the names of the employees and the salary expenses, and also submitted a sample of checks paid to the employees identical to the amounts and names. With regard to new employees who were added to the social insurance law later in the amount of (172,923) riyals, and after reviewing the case file, it was found that the Taxpayer did not submit the documents supporting its objection, which leads the circuit to accept the appeal of the partially Taxpayer and amend the decision of the Adjudication Circuit in this clause regarding the salaries of new employees in the amount of (84,000) riyals.

B) Salary increases during the year: Whereas there is no fault in the Circuit's adoption of the grounds for the contested decision without adding to them, since it deemed that those grounds were sufficient and did not require the addition of any new information, because in upholding it on the grounds set out in those grounds, it confirmed that it did not find in the objections raised against the decision anything that warranted a response beyond what was contained in those grounds. That being the case, and since it has been established that the decision under appeal in the dispute concerning the contested clauses is consistent with the valid grounds on which it is based and sufficient to support its ruling, as the Circuit that issued it examined the substance of the dispute and reached the conclusion set out in its ruling. This court did not find anything that would warrant correction or comment in light of the arguments presented before it. This court therefore rejects the appeal and upholds the decision of the Circuit of first instance in its entirety, based on the grounds given.

Whereas, with regard to the Taxpayer's appeal on the clause (delay fine for 2016 AD), and where its appeal is that the fine should not be imposed because the Authority has carried out an incorrect procedure for the clauses previously described, the Taxpayer submitted in good faith the income tax return and paid the due tax on the due date. Whereas paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states that: "In addition to the fines mentioned in Article Seventy-Six of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay, and this includes the delay in paying the tax required to be withheld and the accelerated payments, calculated from the date the tax is due to the date of payment." Based on the foregoing, and since the Circuit ended in the first clause (salaries and wages) to amend the adjudication decision to accept an amount of (84,000) riyals, and therefore the fine is imposed on the remaining amount from the due date, as the dispute is documentary, which ends with the Circuit partially accepting the Taxpayer's appeal and amending the decision of the Circuit in this clause.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:





### Decision:

First: Acceptance of the appeal in the form of the applicant/ branch of the company..., commercial register (...), unique number (...) Against the decision of the first circuit for adjudicating violations and disputes of income tax in Jeddah Province with number (IZJ-2022-2486) issued in case number (Z-2021-72655) related to the tax assessment for the year 2016 AD.

Second: On the merits:

1- With regard to the Taxpayer's appeal on the clause (Salaries and Wages for 2016 AD):

(a) Accepting the appeal of the partially assigned person and amending the decision of the Adjudication Circuit regarding the clause (salaries of new employees).

(b) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding an clause (salary increases during the year).

2- Accepting the Taxpayer's appeal in part and amending the decision of the Adjudication Circuit regarding the 2016 AD delay fine



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-191592

Case No. ZI-2023-191592

Keywords

Income tax -Salaries and insurance - Adding a balance at the beginning of the period for employees' incentives - Accepting the Taxpayer's appeal

Summary:

The Taxpayer's objection to the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ITR-2023-700), where its appeal lies on the clause (adding the balance of the beginning of the period to the employees' incentives) as it claims to submit documents proving that the balance represents a benefit and not a provision. Whereas, it was proven to the Appeal Committee after reviewing the statement of account that the Taxpayer paid the employees' incentives, which represent part of the monthly salary, and explained in its appeal list the salary details, which include bonuses, and that the payment was made in the total monthly salary, which includes the employees' incentives, and therefore it is clear that it settled the clause during 2015 AD before the transfer and payment, which shows the validity of what the Taxpayer paid that the clause represents an expense. This means; accepting the Taxpayer's appeal and canceling the decision of the adjudicating circuit.

Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (1) of Article (5) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425 AH](#)

Facts:

The submitted appeal was heard on: 05/04/2023 AD, of/ ..., national identity (...), in its capacity as an agent for the appellant company under the power of attorney No. (...) and Lawyer's License No. (...), on the decision of the Third Circuit for the Adjudication of Income Tax Violations and Disputes in Riyadh (ITR-2023-700) issued in Case No. (ZI-2021-71244) related to the 2015 AD tax assessment, in the case filed by

the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

First: Acceptance of the Plaintiff's objection/ ... company , Commercial Registration No. (...), against the decision of the Defendant/ Zakat, Tax and Customs Authority from a procedural perspective.

Secondly: On the merits:

1- Cancel the Defendant's decision regarding the clause (excluding employees' incentives from the adjusted net profit).

2- Reject all other objections.

since this decision was not accepted by the Taxpayer (... company), it filed a list of appeals, which included the following:

As the Taxpayer objects to the contested adjudication circuit's decision, he claims that regarding the clause (adding the opening balance of employee incentives), the Taxpayer clarified that the dispute between the company and the Authority lies in adding the opening balance of employee incentives amounting to (2,858,681) riyals to the zakat base. The company indicated that after management's approval, it records employee incentive accruals during the year, but pays those incentives in the first half of the following year. Based on the foregoing from the adjudication committee's decision and the Authority's viewpoint, the Authority added the accrued employee incentives to the zakat base on the grounds that the company did not provide supporting documents. Revenue is recognized on the day it is earned and expenses are recorded on the date they are incurred, and the recognition of revenues and expenses is not related to the dates of actual cash flows. Therefore, the aforementioned expenses cannot be considered as 'provisions' as there is no estimation to determine the amount of expenses. The Authority added the opening balance of accrued bonuses amounting to (2,858,680) riyals for 2015 AD, which is the closing balance for 2014 AD, to the zakat base. The company provided correct data showing that the opening balance of accrued bonuses is paid during 2015 AD, and therefore there is no unpaid balance at the end of 2015 AD from the opening balance. The adjudication committee concluded in its decision that the accrual formed at the end of the year, while no payment documents for the following year were provided to prove the validity of its claim. The adjudication committee's decision is incorrect because the payment made during the following year, i.e., during 2016 AD, is not related to the year 2015 AD. The Authority added the opening balance to the zakat base and not the closing balance. Therefore, the Taxpayer demands the reversal of the contested adjudication circuit's decision for the aforementioned grounds.

on Wednesday, on: 03/07/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are written in the minutes, via video communication in accordance with the procedures of remote video litigation; based on the provisions of clause (1) of Article 15 of the working rules of zakat, tax and customs committees issued by Royal Decree No: (25711) and



dated: 08/04/1445 A.H.; Calling on the opponents, Mr. ... national ID No. (...), as agent for the appellant by virtue of agency No. (...), and attended ... (National ID No. ...), as the representative of the Defendant/Zakat, Tax and Customs Authority, under an authorization issued by the Deputy Governor of the Zakat, Tax and Customs Authority for Legal Affairs No. (.../.../1445) and dated 19/03/1445 A.H. Asked what it would like to add, the representative of the Defendant stated that it maintains what was previously submitted in this case. when this was brought to the attention of the appellant's agent, it replied that it was adhering to what had already been submitted in this case. when the parties were asked what they wished to add, they replied in the negative, so the Circuit decided to close the hearing and deliberations.

### Grounds:

Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and since it is with regard to the Taxpayer's appeal on the clause (adding the balance of the beginning of the period to the employees' incentives), and where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit towards this clause, as it claims to provide documents proving that the balance represents a benefit and not an allocation. Based on paragraph (1) of Article (5) of the executive regulations for zakat collection issued by ministerial decision (2082) dated 1/6/1438 AH, which states: "All ordinary and necessary expenses required for the activity shall be deducted whether they are paid or accrued, leading to the net result of the activity, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other indications that enable the authority to verify its validity, even if related to previous years. B- It must be related to the activity and not related to personal expenses or other activities. C- It should not be of a capital nature, and in the case of including an expense of a capital nature within the expenses, the result of the activity is adjusted and the fixed assets are included and consumed according to the statutory rates. Based on the foregoing, it is clear that the crux of the dispute lies in the Authority's addition of the clause to net profit because it constitutes a provision representing the opening balance amount of (2,858,681) riyals, while the Taxpayer argues that the clause does not represent a provision as it represents employee incentive expenses that are paid. It is evident that the dispute is documentary due to the Taxpayer's failure to prove payment of bonuses during the year. After reviewing the case file and its contained defenses and documents, it is clear that the Taxpayer submitted documents consisting of (bank account statement for payment - statement of employee incentive details - sample of daily entries). Upon reviewing the account statement, it is evident that the Taxpayer paid employee incentives amounting to (2,963,392) riyals, which represents part of the monthly salary totaling (17,421,819) riyals. In his appeal brief, he clarified the salary details which include bonuses, and the

payment was made as a total monthly salary which includes employee incentives. It is clear from his submission of the statement showing employee incentive details, specifying an amount of (2,963,392) riyals, that the Taxpayer settled the clause during 2015 AD before the completion of the hawl (zakat year) and paid it on 19/04/2015 AD, which demonstrates the validity of the Taxpayer's argument that the clause represents an expense. Consequently, the circuit concludes by accepting the Taxpayer's appeal and canceling the adjudication circuit's decision regarding this clause.

with regard to the Taxpayer's appeal on the remaining clauses at issue in the case, the Circuit has no fault in adopting the grounds for the decision under appeal without adding to them, if it determines that these grounds make it unnecessary to introduce anything new, since in upholding the decision with the content of these grounds, it is clear that the Circuit did not find any objections to the decision that merit a response beyond what is contained in these grounds; whereas it is established that the decision under appeal regarding the dispute regarding the clauses under appeal was consistent with the valid grounds on which it was based and sufficient to carry its judgment since the issuing Circuit scrutinized the dispute and came to the conclusion it reached in its operative part, and since this Circuit did not notice any reason to appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject the Taxpayer's appeal and uphold the decision of the Adjudication Circuit with respect to the rest of the clauses in the case, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Acceptance of the appeal procedurally from the Taxpayer/ ... company, commercial register (...), unique number (...) Against the decision of the third circuit for adjudicating violations and disputes of income tax in Riyadh with number (ITR-2023-700) issued in case number (ZI-2021-71244) related to the tax assessment for the year 2015 AD.

2- On the merits:

- (a) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (adding the balance of the beginning of the period to the employees' incentives).
- (b) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (dividends due to foreign partners).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-171059

Case No. I-2023-171059

### Keywords

Income tax -Salaries and insurances - Salaries overloaded - Acceptance of the Authority's appeal

### Summary:

The Zakat, Tax and Customs Authority objected to the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2485), where its appeal lies on the clause (salaries loaded with the increase for the year 2014 AD) that it did not accept the objection of the Taxpayer with regard to the clause of salary difference for the years from 2011 AD to 2014 AD. Whereas, it was proven to the Appeal Committee that the Authority paid in its appendix memorandum that the Taxpayer did not submit the documents supporting the payment of salaries represented in bank transfers or salary receipt documents, and that by reviewing the submitted documents, the Circuit found the validity of what the Authority paid in its appendix reply memorandum. The implication of this; acceptance of the authority's appeal and cancellation of the decision of the adjudicating circuit.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:

the appeal filed on 23/01/2023 AD, from (...), National ID No. (...) In its capacity as the owner of the appellate institution under the Commercial Register, and the appeal submitted on 29/01/2023 AD by the Zakat, Tax and Customs Authority, against the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2485) issued in Case No. (I-2021-67705)

related to the tax assessment for the years from 2009 to 2016, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

First: Proof of the end of the dispute over the accumulated losses clause for 2009 AD.

Second: Reject the Plaintiff's objection to the clause of undeclared revenues for the years 2010 to 2015 AD.

Third: Reject the Plaintiff's objection to the clause of salaries charged with the increase for the years 2012 AD and 2013 AD.

iv: Accepting the Plaintiff's objection to the salary clause loaded with the increase for the year 2014 AD.

v: Modify Defendant's action on a delay fine clause; in accordance with the merits of the decision.

sixth: Reject the Plaintiff's objection to the concealment fine clause for the years in dispute.

Whereas this decision was not accepted by the Taxpayer (institution ...), it submitted an appeal regulation that was reviewed by the Circuit, where the Taxpayer's appeal lies on the clause (delay fine), so the Taxpayer clarifies that the Authority's action is invalid because it did not fully implement the income tax executive regulations. he requests that its appeal be accepted and the decision of the Adjudication Circuit be reversed. This decision was also not accepted by the appellant (Zakat, Tax and Customs Authority), so it submitted an appeal regulation reviewed by the Circuit, where the appeal of the Authority lies on the clause (salaries loaded with the increase for the year 2014 AD). The Authority clarifies that it did not accept the objection of the Taxpayer with regard to the clause of salary differences for the years from 2011 AD to 2014 AD. By matching the marches with the budget and by referring to the contributions for social insurance, it became clear that most of the hired workers are not sponsored by the Plaintiff and there are no contracts concluded with labor rental companies. Therefore, the differences were not approved because they are not supported by documents, based on what was stipulated in paragraph (1/a) of Article (9) of the Income Tax Executive Regulations. The Authority also stated that a manpower supply agreement (with an institution ...) It is the second party in the labor hire agreement (the supplier of the hired labor), and the submitted data clarify the agreement between the two parties and do not prove the occurrence and disbursement of salaries, as it did not provide the disbursement documents represented by bank transfers or salary receipt documents. With regard to the clause (delay fine), the Authority clarifies that it has imposed a delay fine on unpaid tax differences on the regular date. it asks that its appeal be accepted and that the decision of the Adjudication Circuit be reversed.

on Monday, 13/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No. (25711) and dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and



documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:



upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and with regard to the Authority's appeal on the clause (salaries loaded with the increase for the year 2014 AD), and where the Authority's appeal lies that it did not accept the objection of the Taxpayer with regard to the clause of salary difference for the years from 2011 AD to 2014 AD, and based on what is stipulated in paragraph (1/a) of Article (9) of the Executive Regulations of the Income Tax Law that: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. As well as based on what is stipulated in paragraph (3) of Article (57) of the Executive Regulations of the Income Tax Law, provided that: "3- In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the above , and where the Authority appeals that most of the hired workers are not on the Plaintiff's sponsorship and there are no contracts concluded with labor leasing companies, and therefore the differences were not approved because they are not supported documentarily, while the Taxpayer appeals its objection to the non-acceptance of the years 2012 AD and 2013 AD in order to submit the supporting documents, although the Circuit accepted our objection for the year 2014 AD, and by reviewing the documents submitted, the Circuit found that their acceptance for the years 2012 AD and 2013 AD is correct. As for the year 2014, it became clear that the Authority paid in its supplementary memorandum that the Taxpayer did not submit the documents supporting the payment of salaries represented in bank transfers or salary receipt vouchers, and that by reviewing the documents submitted, the Circuit found the correctness of what the Authority paid in its supplementary response memorandum, which ends with the Circuit accepting the Authority's appeal for the year 2014 AD.

With regard to the appeal of the Taxpayer and the Authority on the clause (delay fine), and based on Article No. (77), Paragraph (A) of the Income Tax Law, which stipulates : (In addition to the fines mentioned in



Article 76 of this Law and in paragraph (b) of this Article , the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay , and this includes the delay in the payment of the tax required to be withheld and the accelerated payments calculated from the date of tax due to the date of payment( as well as based on Article (68) Paragraph (1/b) of the Executive Regulations of the Income Tax Law, which stipulates: (To the fines mentioned in the previous Article (1%) of the unpaid tax for every thirty days shall be added in the following cases, including what is stated in the paragraph: - b- Delay in the payment of the tax due under the assessment of the Authority)), which shall be calculated after the legal date of submitting the declaration and not from the date of assessment." Based on the foregoing, and since the imposition of the delay fine is a consequence of the clauses, and since the Circuit's decision ended with the rejection of the Taxpayer's appeal in the delay fine for the clause (salaries loaded with increase for the years 2012 AD and 2013 AD) and the acceptance of the Authority's appeal in the delay fine for the clause (salaries loaded with increase for the year 2014 AD), which ends with the Circuit amending the decision of the Adjudication Circuit regarding the appeal of the parties regarding this clause.

with regard to the Taxpayer's and the Authority's appeal on the remaining clauses, the Circuit has no fault in adopting the grounds for the decision under appeal without adding to them when it assesses that these grounds make it unnecessary to introduce anything new, because in supporting them with the content of these grounds, it is certain that it did not find any objections to the decision that merit a response beyond what is contained in these grounds as the issuing Circuit scrutinized the dispute and reached the conclusion it reached in its operative part, and as this Circuit did not observe any reason to appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject the appeal of the Taxpayer and the Authority and uphold the decision of the Adjudication Circuit in its conclusion on the remaining clauses, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Acceptance of the appeal procedurally from the applicant/ ... corporation Commercial registration number (...), unique number (...), and the Zakat, Tax and Customs Authority, against the decision of the first adjudication committee regarding violations and disputes of income tax in Jeddah province with number (IZ)-2022-2485) issued in case number (I -2021-67705) related to the tax assessment for the years from 2009 AD to 2016AD.

2- On the merits:

A- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding an clause (undeclared revenues from 2010 AD to 2015 AD).



b- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the (concealing penalty) clause.

C- Rejecting the appeal of the two parties and supporting the decision of the Adjudication Circuit regarding the clause (salaries charged with the increase for the years 2012 AD and 2013 AD).

d- Accepting the appeal of the Authority and canceling the decision of the Adjudication Circuit regarding the clause (salaries loaded with the increase for the year 2014 AD).

e- The decision of the Apellate Committee regarding the appeals of both parties concerning the clause (late payment penalty) was amended.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024-192819

Case No. IW-2023-192819

### Keywords

Income tax -salaries and insurances -salaries and benefits - accepting the Taxpayer's appeal

### Summary:

The Taxpayer's objection to the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ITR-2023-73104), where its appeal against the clause (withholding tax) lies in the Authority's imposition of the tax on the receivable to a related party, and the clause (salaries and benefits) in the Authority's exclusion of salaries and benefits paid to the employee. Whereas, it was proven to the Appeal Committee that the Taxpayer attached the employment contract and an analytical statement showing the salaries and benefits paid, in addition to the bank statement explaining the amounts paid. Consequently; accepting the Taxpayer's appeal and canceling the decision of the adjudication authority.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (1) of Article (11) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (1) of Article (63) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:

The appeal submitted on 26/04/2023 AD by/ ..., in its capacity as Chief Executive Officer under the decision of the Board of Directors and the Zakat, Tax and Customs Authority, against the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ITR-2023-73104) issued in Case No. (IW-2021-73104) related to the tax assessment for the year 2015 AD was considered in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:



First: accepting the objection as a matter of form.

Secondly: On the merits:

- 1- Cancel the Defendant's decision regarding the clause of unauthorized revenues.
- 2- Amending the Defendant's decision regarding the exclusion clause of employees' salaries.
- 3- Amending the Defendant's decision regarding the delay fine clause.
- 4-Rejection of the Plaintiff's objection to the remaining clauses.

Whereas this decision was not accepted by the Taxpayer (the ... company), it submitted an appeal statement that was reviewed by the Circuit, where its appeal lies in relation to the clause (salaries and benefits (...)) The Taxpayer explains that the Authority has excluded the aforementioned clause since the company has proven the validity of these payments. With regard to the clause (withholding tax), the appellant demands the cancellation of the circuit's decision on this clause, because the said amount is not related to payments made to any non-resident suppliers or non-resident related parties, while the amount is represented in non-cash transactions recorded in the books and records locally in exchange for the "restricted stock unit" program granted to the company's employees, which are merely in-kind benefits for employees who benefit from them when meeting certain employment requirements in accordance with the global employment policy of Lazard Group. With regard to the clause (failure to take into account the accumulated losses carried over from previous tax years), where the Taxpayer demands the deduction of the losses carried forward for the years in dispute, due to the disclosure of adjusted losses in its approval for the year in dispute, and therefore it demands the acceptance of its appeal and the reversal of the decision of the Adjudication Circuit on the clauses in appeal.

This decision was also not accepted by the appellant (Zakat, Tax and Customs Authority), so it submitted an appeal list that was reviewed by the circuit and included what happened that the authority is demanding to accept its appeal and to overturn the decision of the Adjudication Circuit on the clauses subject to its appeal.

on Tuesday, on: 13/02/2024 AD, The First Appeals Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via video communication in accordance with the procedures of remote visual litigation; Based on what was stated in Clause No.: (2) Article 15 of the Rules of Work of the Committees for the Settlement of Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441AH; and by appeal to the litigants, attended/ ... National ID No. (...), in its capacity as the Plaintiff's legal representative under the Memorandum of Association attached to the case file, and attended ... (National ID No....), in its capacity as the representative of the Defendant/Zakat, Tax and Customs Authority, pursuant to an authorization issued by the Deputy Governor of the Zakat, Tax and Customs Authority for Legal Affairs No. (.../.../1445) dated 19/03/1445 AH, and by asking the representative of the Defendant what it would like to add, it stated that it adheres to what was previously submitted in this case, and by presenting this to the representative of the Plaintiff, it replied by adhering to what was previously

submitted in this case, and by asking the parties what they would like to add, they answered in the negative, and accordingly the Circuit decided to close the pleadings and deliberation.

### Grounds:



upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and with regard to the Taxpayer's appeal on the clause (salaries and benefits (...)), where the Taxpayer's appeal is limited to the Authority excluding the salaries and benefits paid to the employee above, since the company has proven the validity of these payments. Based on the foregoing, the Taxpayer has attached the employment contract and an analytical statement showing the salaries and benefits paid (...), in addition to the bank statement indicating the amounts paid, which leads the Circuit to accept the Taxpayer's appeal regarding this clause.

Regarding the Taxpayer's appeal on the clause (withholding tax), where the Taxpayer's appeal is limited to the Authority imposing withholding tax on the receivable of a related party (company)... This is in exchange for compensation for the deferred remuneration paid by the associated company to the Taxpayer's employees, as the company confirms that the said amount is not related to payments made to any non-resident suppliers or non-resident related parties, on the contrary, the amount is represented in non-cash transactions recorded in the books and records locally against the "restricted stock unit" program granted to the company's employees. Based on the above, it is clear that the Taxpayer attached a copy of the contracts of the employees benefiting from the deferred remuneration with a copy of the agreements signed between (... - ...) and employees of the Taxpayer, as it was found through the agreements that (... - ...) Employees are granted bonus shares on behalf of the Taxpayer in accordance with the terms and conditions set out in the agreement, and since the Taxpayer attached documents supporting its point of view that the amounts in dispute do not relate to any services provided by related parties, which ends with the Circuit accepting the Taxpayer's appeal and canceling the adjudication decision on this clause.

Regarding the Authority's appeal regarding the clause (assessment ing to additional revenues) and the clause (salaries and benefits)... Article (70) of the Sharia Procedure Law promulgated by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the case is set, the content of the case and the answer must be

monitored before the agreement is recorded, taking into account that the origin of the case is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or Circuit, provided that the merits of the case or some of it is among those agreed upon." Based on the foregoing, and where this Circuit has proven the Authority's request to leave the appeal as stated in the letter issued by the Authority in the supplementary memorandum, which includes the following: "The Authority wishes to inform the Honorable Circuit that it has left its appeal with regard to the above clause specifically and the procedures resulting from its appeal for this clause as per the terms of reference of the decision of the Disposition Circuit..." This requires the Circuit to accept the abandonment of the litigation on these clauses.

Regarding the appeal of the Authority and the Taxpayer on the clause (delay fine), "and based on paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment.

" Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: B- Delay in paying the tax due under the Authority's assessment "

Based on the foregoing, and by reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the dispute between the two parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the statutory texts, and since the fine is assessment ed to the existence and non-existence of acceptance or rejection of the clause related to it, the Circuit ends up amending the decision of the Adjudication Circuit regarding the delay fine by dropping the fine for the clauses in which the Authority left its appeal, and the clauses in which the taxp's appeal was accepted due to the fall of its origin, and the validity of imposing fines on the clauses in which the appeal was rejected."

With regard to the Taxpayer's appeal on the clause (not taking into account the accumulated losses carried over from previous tax years), where the Taxpayer's appeal lies in the claim to deduct the losses carried forward for the years in dispute, due to its disclosure of adjusted losses in its approval for the year in dispute. Based on paragraph (1) of Article (11) of the Executive Regulations of the Income Tax Law related to the posting of losses, which stipulates the following: "The Taxpayer has the right to carry forward the adjusted operating losses, according to the controls of the law and these regulations for tax purposes, to the tax years

following the year of loss by reducing the profits of the following years until the full accumulated operating losses are recovered, without being limited to a specific period, provided that the maximum allowed deduction in each tax year does not exceed (25%) of the annual profit in accordance with the Taxpayer's declaration." Based on the above, and since the Taxpayer's appeal on this clause is related to the result of the Authority's appeal on the clause of additional revenues from contracts, and since the Authority has left its appeal thereon, therefore, there is no need for the Taxpayer to claim the deduction of the losses carried forward for the years in dispute, due to its disclosure of adjusted losses in its approval of the year in dispute, which ends with the Circuit dismissing this clause.

Regarding the Taxpayer's appeal regarding the clause of salaries and benefits (...and... Since there is no reproach upon the circuit for adopting the grounds of the contested decision without adding to them, whenever it determines that those grounds are sufficient and obviate the need for presenting anything new, because in its endorsement of them with what those grounds contained, it is confirmed that it did not find in what was directed against the decision in terms of challenges anything that deserves a response beyond what those grounds included. Given this, and since it is established that the appealed decision regarding the dispute concerning the contested clauses came in accordance with the valid grounds upon which it was based and which are sufficient to support its ruling, as the circuit that issued it undertook to examine the core of the dispute therein and concluded regarding it with the result it reached in its operative part. Since this circuit has not observed anything that requires correction or comment regarding it in light of the defenses raised before it, this circuit concludes by rejecting the Taxpayer's appeal and upholding the decision of the adjudication circuit under appeal in the result it reached, based on its grounds.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

First: Acceptance of the appeal procedurally from the appellant, the company (...), commercial registration (...), unique number (...). The appeal submitted by the Zakat, Tax and Customs Authority against the decision of the first circuit regarding violations and disputes of income tax in the city of Dammam with number (ITR-2023-73104) issued in case number (IW-2021-73104) related to the tax assessment for the year 2015.

Second: On the merits:

1- Acceptance of the abandonment of the litigation in connection with the Authority's appeal on an clause (assessment ing to additional revenues)

2- With regard to the parties' appeal on an clause (salaries and benefits):

A- Acceptance of the abandonment of the litigation in relation to the Authority's appeal on the clause (salaries and benefits) (... -...- ...).



B- Rejection of the Taxpayer's appeal and support of the decision of the Circuit of Segregation regarding the clause (salaries and benefits)... F.

c- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (salaries and benefits (...)).

3- Amending the decision of the Adjudication Circuit regarding the appeal of the two parties on the clause (delay fine).

4-To disregard what is related to the Taxpayer's appeal on the clause (not taking into account the accumulated losses carried over from previous tax years).

5- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (withholding tax).





## Tax Base and Tax Rates



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-178383

Case No. I-2023-178383

### Keywords

Income Tax -Tax Base and Tax Rates - Unrealized Foreign Currency Conversion Differences -Acceptance of Taxpayer Appeal

### Summary:

The Taxpayer's objection to the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6891), where its appeal against the clause (net income differences) lies in the branch amending the declarations based on the International Financial Reporting Standard, the clause (late payment fine) in the Authority's imposition of late fines on the disputed clauses, and the clause (unrealized foreign currency conversion differences for 2019 AD) in that it attached all the documents. Whereas, the Appeal Committee has been informed of the financial statements of commercial and operational transactions with the entities associated with the Taxpayer, including the headquarters in the United Kingdom and the company's branches in the United Arab Emirates, Australia, the United States and New Zealand. The Taxpayer submitted a clarification of the calculation of currency exchange differences, including the movement of exchange rates during the period from 1 April 2018 to 31 March 2019 AD for those foreign currencies and the account numbers of the professor and the amounts, and a monthly analysis of those differences. Whereas, the Authority's action was based on the failure of the Taxpayer to provide a clarification of the transactions under which these differences arose and the absence of foreign investments, and where the Taxpayer was found to have transactions with related parties that are dealt with in foreign currencies. This resulted in the acceptance of the Taxpayer's appeal and the cancellation of the decision of the Adjudication Circuit.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (12) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH.](#)

- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH.](#)

### Facts:



The appeal submitted on 15/02/2023 AD by/ ... was considered Identity number (...) In its capacity as agent for the branch of the appellant company under the power of attorney issued by the Arab British Circuit of Commerce and ratified by the official authorities in the Kingdom of Saudi Arabia, the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6891) issued in Case No. (I - 2021-78958) related to the tax assessment for the years 2017 AD and 2019 AD, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

accepting the objection on form and rejecting it on the merits.

Whereas this decision was not accepted by the Taxpayer (branch of a company...), it submitted an appeal regulation reviewed by the Circuit, where the Taxpayer's appeal lies on the clause (unrealized foreign currency conversion differences for 2019 AD). The Taxpayer explains that it attached all the documents and evidence of their transmission to the Authority and indicates that the profits of unrealized foreign currency conversion differences recognized in the financial statements for the financial year ended 31 March 2019 AD were calculated in accordance with the revaluation of the credit balances held by the company in foreign currencies. While the Company holds balances due to related parties in British Pound (GBP), US Dollar (USD) and United Arab Emirates Dirham (AED), the unrealized profits were mostly from the revaluation of GBP balances due to ...) It is the parent company in Britain, which has transactions with the branch in the Kingdom. As for other currencies such as the US dollar and the UAE dirham, as you know, their prices remained almost constant or slightly fluctuating, so they did not have a noticeable impact in this regard. As in 2018, the British pound fell against other global currencies largely due to instability as mentioned earlier, due to the decision to withdraw the United Kingdom (UK) from the European Union after the "Brexit" vote. On November 22, 2018, Britain officially withdrew from the European Union, which was reflected in the movement of the exchange rate of the British pound against the Saudi riyal. Finally, the company would like to clarify that the rationale for not paying the amounts due to (...) British was holding funds in Saudi Arabia to meet working capital requirements, with large amounts of cash being credited to high receivable balances as evidenced by a low cash balance and an increase in the outstanding balance. With regard to the clause (net income differences), the Taxpayer explains that the branch has amended the disclosures based on IFRS 15 as of April 1, 2018 AD using the cumulative effect approach, as allowed by IFRS 15, which means that the branch has regrouped the cumulative effect of the application of IFRS 15 as an amendment to the opening balance of retained earnings. As a result of the adoption of IFRS 15, the revenue was re-disclosed for the years ended March 31, 20106 AD, 2017 AD and 2018 AD to reflect the revenue in the financial

statements for the years in which the revenue-related performance obligations were fulfilled. Amendments to IFRS 15 mainly led to the transfer of the revenue declared in previous years to subsequent years when the performance obligations were fulfilled. Accordingly, the Branch has submitted amended tax returns on the Branch's income for the periods ended 31 March 2016 AD, 2017 AD and 2018 AD with the attached letters from the Branch in order to avoid double taxation on the same revenues in different years and to harmonize and match the income tax returns with the audited financial statements of the Branch. Accordingly, it is clarified that: 1- Attach to your Excellency the approval of the Authority issued by them to amend the declarations (amendment letter) and this cancels the reason that relied on the adjudication committee to support the Defendant's decision. 2- The written approval of the Authority sent to us by the Authority's representative, Relationship Manager Munther bin Jadid, before making the amendment, and this also cancels the reason that relied on the adjudication committee to support the Defendant's decision. 3- Financial statements in Arabic for the year ended 31 March 2017. 4- The declaration in Arabic (noting that amending the declaration does not require making a new declaration, but only requires entering through the portal of the system and making amendments electronically through the system and then receiving an amendment letter), so it is not required that we submit the declaration again in Arabic and this procedure approved by the Authority, but in order not to leave any gap, we attach to you an amended declaration in Arabic. With regard to the clause (late payment fine), the Taxpayer explains that the Authority imposes late fines on the disputed clauses in accordance with the text of Article (68), paragraph (1), and the branch wishes to clarify that paragraph (a) of Article (68-1) of the Executive Regulations of the Law does not apply to the disputed clauses in the case of the branch, as it paid the tax due from it under the payment notices submitted to the Authority. Paragraph (b) of the same article also does not apply, as the branch objects to the authority's claim – by virtue of this letter - which represents the original in imposing the delay fine, and since the branch has rejected and objected to the amount of the tax, the delay fine is implicitly rejected. The calculation of the delay fine starts from the date on which the tax becomes final, and this comes only after the Taxpayer accepts the assessment or the end of the objection procedures. Accordingly, the delay fine shall be imposed from the date on which the obligation becomes final under the regulations. Furthermore, paragraph (a) of Article (77) of the Income Tax Law and Article (68) of the Executive Regulations of the Law were not intended to punish the Taxpayer as a result of the delay on the part of the Authority or the primary or appellate objection committees in ending the tax status of the Taxpayer and determining the amount of tax due, and it demands to accept its appeal and overturn the decision of the Adjudication Circuit.

on Thursday, 05/16/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No: (25711) and dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and

documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:



Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and with regard to the Taxpayer's appeal on the clause (unrealized foreign currency conversion differences for the year 2019AD), and where the Taxpayer's appeal lies in that it attached all the documents, and based on paragraph (3) of Article (57) of the Income Tax Executive Regulations, which stipulates the following: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on Article (12) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/6/1425AH, related to the conversion of currency, which stipulated the following: "Subject to the controls on currency conversion contained in Article 30 of the Law, currency conversion gains or losses resulting from revaluation shall not be considered for tax purposes." Based on the above, and since the dispute between the parties to the lawsuit is related to the subjection of the Authority to unrealized foreign currency conversion differences for the year 2019 AD to income tax, and to the study of the defenses of the parties to the lawsuit and to the Circuit's review of Clarification No. (4) of the financial statements Commercial and operational transactions with the parties associated with the Taxpayer, including the headquarters in the United Kingdom and branches of the company in the United Arab Emirates, Australia, the United States and New Zealand. The Taxpayer submitted a clarification of the calculation of currency exchange rate differences that includes the movement of exchange rates during the period from 1 April 2018 to 31 March 2019 AD for those foreign currencies and the numbers of the accounts of the professor and amounts and a monthly analysis of those differences, as the Authority's action was based on the failure to provide clarification of the transactions under which these differences arose and the absence of foreign investments, and where the Taxpayer showed transactions with related parties to be dealt with them in foreign currencies, and since the Taxpayer provided sufficient clarification

With regard to the Taxpayer's appeal on the clause (net income differences), where the Taxpayer's appeal lies in the branch amending the declarations based on the International Financial Reporting Standard, and

based on paragraph (3) of Article (57) of the Income Tax Executive Regulations, which stipulates the following: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the above, and since the dispute between the parties to the lawsuit is related to the rejection by the Authority of the Taxpayer's claim to amend the net profit under which it was charged, where the appellant submits that the net accounting profit before tax and according to the Authority's assessment is (3,906,252) riyals, while according to the amended income tax declaration submitted by the branch and the audited financial statements for the fiscal year ended 31 March 2017 AD (Note (15)), the net accounting profit for the year before tax amounted to (1,472,495) Saudi riyals, and it submits that the Authority agreed to the Taxpayer to submit amended tax returns, and the Circuit's review of the documents submitted by the Taxpayer showed that the Taxpayer attached audited financial statements and the net profit before tax was (3,906,525) riyals, and by reviewing the document to which the Taxpayer indicated that the Authority's approval of the amendment of the declaration showed that it was an e-mail dated 15/9/2020 AD from one of the Authority's employees to the accounting office stating that in response to their question that the Taxpayer could exploit the initiative and amendment period It is clear from the mentioned reply that the Taxpayer can amend his returns, but this does not mean that the Taxpayer has actually submitted amended returns and the Authority's approval thereof, as it became evident that the mentioned email is a response to an inquiry from the accounting office. The Taxpayer also submitted a copy of a return in Arabic that does not include the statements attached to the return and bears a signature dated 28/2/2023 AD, showing the book net profit in the return amounting to (1,472,497)SR.

The Taxpayer also submitted an amendment letter dated 29/9/2020 AD stating that the Taxpayer amended the return clauses, and it appears from the notification that the tax decreased by (2,084,036.6) riyals in his favor. Upon reviewing note number (15) from the financial statements for the fiscal year ended March 31, 2019 AD, the circuit found that there is an amendment to the financial figures for the years 2016 AD and 2017 AD, and the note shows that the accounting net profit before tax is (1,472,495) Saudi riyals. Since the Authority's assessment was issued on 07/07/2021 AD, and since it was established that an amendment occurred to the Taxpayer's income for 2017 AD pursuant to the audited financial statements for 2019 AD, and since the Plaintiff submitted an amendment letter dated 29/9/2020 stating that the Taxpayer amended the return clauses, i.e., before the assessment was issued, the Authority should have examined that amended return and investigated the grounds for the amendment. Consequently, the circuit concludes by accepting the Taxpayer's appeal and canceling the adjudication circuit's decision on this clause.

With regard to the Taxpayer's appeal on the clause (late payment fine), where the Taxpayer's appeal lies in the Authority's imposition of late fines on the contested clauses in accordance with the text of Article (68),

paragraph (1), and based on paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes delays in paying the tax required for withholding and accelerated payments, calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the Law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these Regulations, including cases that are disputed, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on the foregoing , and since the dispute between the parties to the lawsuit relates to the delay fines imposed as a result of assessment ing the Authority, and since the delay fine is calculated from the end date of the deadline for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Defendant, and since the dispute between the parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the statutory texts, which ends with the Circuit imposing the delay fine from the due date on the clauses in which the Taxpayer's objection was rejected, and where the Circuit's decision ended up accepting the clause (unrealized foreign currency conversion differences for 2019 AD), and the clause (net income differences) of the Taxpayer's appeal, which ends with the Circuit accepting the appeal on the clause of late payment fine, the adjustment of the assessment due to the loss of the fine by the loss of its origin of those accepted clauses.

with regard to the Taxpayer's appeal regarding the clause (End of Service Benefits), the Circuit has no fault in adopting the grounds for the decision under appeal without adding to them when it determines that these grounds make it unnecessary to introduce anything new, because in supporting the decision with the content of these grounds, it is clear that the Circuit did not find any objections to the decision that merit a response beyond what is contained in these grounds, and since this is the case and it is proven that the decision under appeal regarding the disputed clauses as the issuing Circuit scrutinized the dispute and came to the conclusion it reached in its operative part, and as this Circuit did not notice anything that warrants censure or comment on it in light of the defenses raised before it, this Circuit concludes to reject the Taxpayer's appeal and uphold the decision of the Adjudication Circuit with respect to the result it reached in this clause, based on the grounds for the decision.



On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

1- Accepting the appeal procedurally of the Taxpayer's ... commercial Register No. (...), unique number (...), against the decision of the Third Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh City (IFR-2022-6891) issued in Case No. (I - 2021-78958) related to the tax assessment for 2017 AD and 2019AD.

2- On the merits:

(A) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (unrealized foreign currency conversion differences for 2019 AD).

(b) Accepting the appeal of the Taxpayer and canceling the decision of the Adjudication Circuit regarding the clause (net income differences).

(c) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the provision of (end of service allowance).

(d) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (late payment fine).





Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024-173124

Case No. I-2023-173124

### Keywords

Income Tax -Tax Base and Tax Rates - External Purchase Differences -Acceptance of Taxpayer Appeal

### Summary:

The Taxpayer's objection to the decision of the First Circuit for the Adjudication of Income Tax Violations and Disputes in Jeddah Governorate No. (IZJ-2022-2601), where its appeal lies on the clause (local purchases that were mistakenly included in foreign purchases), as it claims that the company included local purchases within the clause of foreign purchases in its approval for 2015 AD by mistake, and the clause (external procurement differences (services from associated companies that were mistakenly declared within foreign purchases)), as it claims that the external procurement differences are in fact services provided by non-resident associated companies, not purchases. Whereas it has been proven to the Appeal Committee that the main reason for the difference is the incorrect classification of those expenses in the company's declaration as external purchases, and this does not affect what the Authority pays by not matching the value of the analytical statement submitted with the total amount shown in the declaration, as it is possible that part of the amounts shown in the declaration represents the amount of services that were classified in error in the invoice samples. This means accepting the partially assigned appeal and canceling the decision of the Adjudication Circuit.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH.](#)
- Paragraph (3) of Article (67) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH.](#)

- Paragraph (1) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH.](#)

### Facts:



The appeal submitted on 29/01/2023 AD by/ ..., in its capacity as the general manager of the appellant company, and the appeal submitted by the Zakat, Tax and Customs Authority on 31/01/2023 AD, against the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2601) issued in Case No. (I-2021-78094) related to the tax assessment for the year 2015 AD, was considered in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

First: Modify the Defendant's action on an external procurement differences clause; in accordance with the merits of the decision.

Secondly: Accept the Plaintiff's objection to the non-approval of the advanced payments paid.

Third: Modify the Defendant's action on the delay fine clause; in accordance with the merits of the decision.

Since this decision was not accepted by the Taxpayer (... Company), he submitted an appeal brief which the Circuit reviewed. The Taxpayer's appeal concerns the clause (differences in external purchases (services from related companies erroneously declared under external purchases)). The Taxpayer referred to what was previously clarified in the company's response memorandum that part of the external purchase differences are in fact services provided by non-resident related companies totaling (26,871,778) Saudi riyals and are not purchases, (as they were included under the external purchases category in the return by mistake) and which were subject to withholding tax as shown in the annual withholding tax return for 2015 AD, where the amounts paid to non-resident related parties for services withheld during the year appear, and part of them in the above amount were declared under the external purchases clause in the company's return by mistake. The company provided an analytical statement for the above clause in addition to supporting invoices alongside reconciliation with the annual withholding tax return. Regarding what the adjudication committee mentioned in its decision about the non-matching of the value of the analytical statement submitted and the total amount appearing in the annual withholding tax return, the company is surprised by what the adjudication committee argued, as the company had previously clarified in its submitted response memorandum that the reason for the difference is due to the fact that part and not the total of the amounts appearing and highlighted in the annual withholding tax return represent the amount of services that were classified as external purchases in the company's return by mistake, where the company provided an analytical statement explaining the part included in the annual withholding tax return that relates to the amount of the above clause. Accordingly, it is clear that the amount of the above clause represents services that were subjected to withholding tax and actually declared in the annual withholding tax return. Therefore, what was mentioned in the First Circuit's decision about the non-

matching of the annual withholding tax return with the amount of the above clause is incorrect. In view of the data and documents submitted, the company believes that there is no regulatory reason to reject this clause as it has provided everything necessary to resolve the documentary dispute regarding it. The company also objects to the decision of the First Circuit of the adjudication committee, as it did not study the company's objection and escalation defenses regarding this clause. The company repeatedly clarified that part of the amounts paid from abroad for services were disclosed among external purchases, and provided the analytical statement for that clause as well as withholding forms. However, the First Circuit rejected approving the clause on the grounds of its non-matching with the withholding forms. The company is surprised by the First Circuit's procedure, as part of those amounts in the withholding forms were classified as external purchases and not all of them, and therefore the value of the clause will not match the amounts declared in the withholding forms. Accordingly, it is clear what confirms the settlement data provided by the company, as the main reason for the difference is the incorrect classification of those expenses in the company's declaration as external purchases, while they represent services provided by external parties and were subject to withholding tax in the monthly withholding forms as shown in the annual withholding tax form. Accordingly, the company considers the validity of this expense as being deductible by a law and documented. With regard to the Taxpayer's appeal on the clause (local purchases that were mistakenly included in the foreign purchases), the Taxpayer explained that the company included local purchases worth (5,760,627) Saudi riyals in the clause of foreign purchases in its approval for the year 2015 AD by mistake, and submitted the list of local suppliers that were dealt with, the analytical statement of those purchases, and a sample of supporting documents, the largest part of which represents what belongs to the institution .... for contracting, which confirms that the above amount represents local purchases. However, the First Circuit concluded in its decision to accept only part of the value of the above amount according to the value of the sample documents submitted by the company valued at (3,909,441) Saudi riyals and rejected the remaining value of the clause on the grounds of not providing related documents. The company is surprised by what came in the Circuit's decision, as previously clarified, the submitted documents represent a sample of the entire value of the clause, and it is likely that when examining any settlement clause, a sample of documents and invoices is provided to confirm the validity of what came in the settlement and not all documents related to the clause, due to the large number of invoices related to those purchases. Therefore, a sample of documents is provided to prove the validity of the clause and that it is documentarily supported, knowing that the company confirmed to the Authority that it is ready to provide any additional documents that the Authority may request regarding the above settlement and asked the Authority to select any other sample from the analytical statement provided for those purchases so that the company can provide related invoices. However, the Authority ignored the company's request and what it provided of documents and did not select any additional sample. Accordingly, there is no doubt that the company has complied with what came in paragraph (3) of Article (57) of the Executive Regulation mentioned in the decision in proving the validity of what was stated in its return, and therefore the Authority



as well as the adjudication committee may not approve the entire value of the clause on the grounds of not providing all documents. It is logical that the total amount of supporting documents does not match the total value of the clause given that the submitted documents represent only a sample of documents and not all supporting documents, and it is customary for the Authority to examine a sample of documents to prove the validity of any expense. It should be noted that the company provided a sample of invoices from the supplier that represents the largest part of the value of that clause, and accordingly, the entire value of the above clause should be accepted based on the sample documents provided, which were verified by the adjudication committee. Referring to what the adjudication committee mentioned about the company not providing the trial balance to confirm matching regarding that clause, the company clarifies that it was never previously requested to provide what was mentioned above, and the company has no knowledge about the reason for the Authority's rejection of that clause. When referring to the Authority's response memorandum previously submitted, it is clear that the Authority did not detail the grounds for its rejection of the above clause and did not request any specific document or sample of documents, but only argued that the submitted documents were insufficient without mentioning what is lacking to prove the validity of that clause. Despite what was mentioned above, the company is surprised by what the adjudication committee argued above, as how is the trial balance linked to confirming that the above amount represents local purchases, as it is not necessary for the accounting system to allocate separate accounts for both local and foreign purchases, but both are classified as purchases without specifying the type of purchases as local or foreign in the details of each transaction when recorded in the system. With regard to the Taxpayer's appeal on the clause (delay fine), where the decision of the adjudication committee decided to amend the Authority's calculation of the delay fine clause on the unassisted tax difference according to what was decided on the clause of foreign purchases, as the delay fine is originally assessment ed, that is, the tax, and lapses with the loss of its original, in accordance with paragraph (1) of Article Sixty-Eight of the Executive Regulations of the Income Tax Law. In this regard, the company wishes to note that the Authority has imposed a delay fine of (1%) for each (30) days of delay calculated from the date of the statutory date of filing the declaration until the date of payment, based on Article (77), paragraph (1) of the current tax law. Accordingly, the company clarifies that the Authority is not entitled to impose a delay fine on the company in accordance with the text of Article (68), paragraph (1) of the Executive Regulations of the Income Tax Law, which states the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: (a) Delay in paying the tax due under the declaration. B-Delay in paying the tax due under the Authority's assessment..." In this regard, the Company clarifies that paragraph (a) of Article (168) of the Executive Regulations of the Law does not apply to the case of the Company, as it has paid the tax due on it under its tax returns for the year in question submitted to the Authority, and paragraph (b) of the same article does not also apply, as the Company objects to the Authority's claim under its objection letter submitted, which represents the original in imposing the delay fine, and since the Company has rejected and objected to the original, the branch is



implicitly rejected. In addition, it must be noted that the Company has approved the tax claim issued by the Authority, the delay fine must be from the date of the Authority's claim and not from the date of submitting the declaration in accordance with Article (68) Paragraph (2) of the Executive Regulations, which states the following: "No, the fine of 1% of the unpaid tax must be calculated if the delay period is not completed thirty days from the due date." Therefore, the due date is the date of issuance of the Authority's claim in the event that the Company approves the claim. In addition, the Company objects to the late payment fine because of a difference in views between the Authority and the Company. The Company believes that the assessment clauses are not subject to tax for the grounds mentioned above. In this regard, the Company would like to confirm that many decisions have been issued in this regard, including, but not limited to, the following: The extraordinary decision No. (968) of 1431AH and the preliminary decision No. (29) of 1432AH, and since those above decisions supported the Taxpayer in not imposing a fine for delaying payment, there is a fundamental difference of views. Many decisions were issued under the new tax law, which supported the Taxpayer in the absence of a fine for delaying payment in the event of a real difference of views with the Authority, and the absence of any indication of bad faith on the part of the Taxpayer. It should be noted that many decisions were issued that ruled to calculate the fine for delaying payment starting from the date of the final decision and not from the date of submitting the declaration. Several judgments were also issued by the Board of Grievances that confirmed the inadmissibility of imposing a fine for delaying payment based on the provisions of Sharia and the system of government in the Kingdom. Such judgments include, but are not limited to, the judgment of the Board of Grievances in Administrative Case No. (899/1/S) of 1437AH. Accordingly, the Taxpayer demands the acceptance of its appeal and the reversal of the decision of the Circuit of Settlement of the clauses subject of its appeal. This decision was also not accepted by the Authority, so it submitted an appeal regulation that was reviewed by the Circuit, where the Authority's appeal lies on the clause (delay fine). The Authority clarified that the delay fine was imposed on unpaid tax differences on the regular date based on Article No. (77), Paragraph (A) of the Income Tax Law, which stipulates : (In addition to the fines mentioned in Article 76 of this Law and in paragraph (b) of this Article , the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay, and this includes the delay in the payment of the tax required to be withheld and the accelerated payments calculated from the date the tax is due to the date of payment) ,as well as based on Article (68) Paragraph (1/b) of the Executive Regulations of the Income Tax Law, which stipulates: (To the fines mentioned in the previous Article (1%) of the unpaid tax shall be added for every thirty days of delay in the following cases, including what is stated in the paragraph: - b- Delay in the payment of the tax due under the assessment of the Authority), and accordingly, the Authority demands the acceptance of its appeal and the reversal of the decision of the Adjudication Circuit regarding this clause.

on Sunday, on: 17/03/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via video communication in accordance with the procedures of remote video litigation; based on the provisions of clause no:(2) of Article Fifteen of the Rules of Work of

the Committees for Adjudicating Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441 AH; after reviewing the appeal submitted by the parties to the case, and after examining the contents of the case file, the circuit decided that the case has become ready for adjudication and issuing the decision on its subject matter, and since the circuit found nothing to require the presence of the parties to the case, the circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:



upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and with regard to the Taxpayer's appeal on the clause (differences in external purchases (services from associated companies that were mistakenly declared within external purchases)), where the Taxpayer's appeal lies in the appeal of the Adjudication Circuit's rejection of its objection to the clause in dispute, as it claims that the differences in external purchases are in fact services provided by non-resident associated companies and not purchases. Based on paragraph No. (3) of Article (57) of the Executive Regulations of the Income Tax Law, which stipulates the following: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the foregoing, the statement of imports issued by the General Authority of Customs is a basic presumption from a neutral third party, and by looking at the case file, it becomes clear that the Authority's action to amend the results of the Taxpayer's business is due to differences in the value of imports listed in the Taxpayer's declaration compared to imports according to the customs statement, and by looking at the case documents and the defenses they contain, it becomes clear that the Taxpayer submitted an analytical statement that included the amounts that the Taxpayer indicated as amounts that were wrongly declared within foreign purchases and paid the withholding tax for them. By comparing the analytical statement with the withholding tax declaration attached to the same file, it becomes clear that it submitted its declaration of withholding tax and it attached samples of invoices in the amount of (744,606) US dollars, or an amount of (2,793,277.72) Saudi riy, and an invoice in the amount of (4,195,267) US dollars, or an amount of (15,747,914) Saudi riy, and by comparing the attached analysis with the with the with the withholding tax declaration submitted by the Taxpayer.

With regard to the Taxpayer's appeal on the clause (local procurement was mistakenly included in the foreign procurement), where the Taxpayer's appeal lies in the appeal against the dismissal of its objection on the clause in dispute, as it claims that the company included local procurement under the clause Foreign procurement in its approval for 2015AD by mistake. Based on the above, the statement of imports issued by the Zakat, Tax and Customs Authority is a basic presumption from a neutral third party, and by reviewing the case file, it becomes clear that the Authority's action to amend the results of the Taxpayer's work is due to differences in the value of imports listed in the Taxpayer's declaration compared to imports according to the customs statement, and by reviewing the documents attached to the case file, it becomes clear that the Taxpayer submitted a statement of the names of local suppliers and the amounts of expenses related to them, as it submitted samples of the invoices of the Zakat, Tax and Customs Authority... Contracting with an amount of (1,204,782.90) riyals, and an amount of (646,402) riyals. It is logical that the total amount of invoices submitted does not match the total value of the clause by virtue of the fact that the invoices represent the same, knowing that the Authority, after reviewing the documents, acknowledged the validity of the invoices, and where the adjudication decision ended by rejecting the objection of the Taxpayer for not submitting the trial balance, knowing that the accounting system does not necessarily allocate separate accounts for both local and foreign purchases, but rather both are classified as purchases. Accordingly, and where the Taxpayer submitted the detailed statement and a sample of invoices identical to the bulk of the value of the clause, which ends with the circuit partially accepting the Taxpayer's appeal and amending the decision of the Adjudication Circuit regarding this clause.

with regard to the Taxpayer's and the Authority's appeal on the (delay fine) clause, and based on the text of paragraph (a) of Article 77 of the Income Tax Law promulgated by Royal Decree No. M/1 dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these regulations, including cases that are contested, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on the foregoing, and by reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the end date of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the



provisions of the Law and the amendments made by the Authority, and since the dispute between the parties is a documentary dispute, and it did not arise from a significant difference in the interpretation of the statutory texts, which ends with the Circuit amending the decision of the Adjudication Circuit regarding this clause.

Regarding the Taxpayer's and the Authority's appeals concerning the remaining clauses subject to the case, since there is no reproach upon the circuit for adopting the grounds of the contested decision without adding to them, whenever it determines that those grounds are sufficient and obviate the need for presenting anything new, because in its endorsement of them with what those grounds contained, it is confirmed that it did not find in what was directed against the decision in terms of challenges anything that deserves a response beyond what those grounds included. Given this, and since it is established that the appealed decision regarding the dispute concerning the contested clauses came in accordance with the valid grounds upon which it was based and which are sufficient to support its ruling, as the circuit that issued it undertook to examine the core of the dispute therein and concluded regarding it with the result it reached in its operative part. Since this circuit has not observed anything that requires correction or comment regarding it in light of the defenses raised before it, this circuit concludes by rejecting the Taxpayer's appeal and rejecting the Authority's appeal and upholding the adjudication circuit's decision under appeal in the result it reached regarding the remaining clauses subject to the case, based on its grounds.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

First: Accepting the appeal procedurally from the Taxpayer/ Company..., commercial registration (...) , unique number (...) The appeal submitted by the General Authority of Zakat and Tax against the decision of the first circuit regarding violations and disputes of income tax in Jeddah with number (IZJ-2022-2601) issued in case number (I-2021-78094) related to the tax assessment for the year 2015AD.

Second: On the merits:

1- With regard to the Taxpayer's appeal on the clause (external procurement differences):

(a) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (foreign purchases made in the name of the customer).

(b) Accepting the appeal of the partially assigned person and amending the decision of the Adjudication Circuit regarding the clause (services from associated companies that were mistakenly declared within foreign procurement).

2- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (purchases and other expenses).





- 3- Accepting the partially Taxpayer's appeal and amending the decision of the Adjudication Circuit and rejecting the Authority's appeal in relation to the clause (local procurement was mistakenly included in the foreign procurement).
- 4- Amending the decision of the Adjudication Circuit regarding the clause (delay fine).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-171167

Case No. W-171167-2023

### Keywords

Income Tax - Tax Base and Tax Rates – Letter of Credit Payments – Acceptance of Taxpayer Appeal

### Summary:

The Taxpayer's objection to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-2252), where the Taxpayer's appeal on the clause (payments of letters of credit) lies in the fact that the financing provided by the sister company in Lebanon to open a letter of credit to them and that the company paid the principal amount and there is no consideration for this financing (interest), and in the clause (settlement for the year 2018AD) on the Authority to subject the settlement of accounts to withholding tax and that the amounts relate to payment to a local supplier on behalf of the sister company and in the clause (delay fine) that the fine is assessment ed to the existence and non-existence of acceptance or rejection of the relevant clause. Whereas it was proven to the Appeal Committee regarding the payments of letters of credit that the Taxpayer did not bear any interest or additional cost and that the Authority did not provide proof of the Taxpayer's bearing the returns or interest of the loans, and with regard to the settlement amounts, it was not clarified ... The nature of the relationship of the related parties in one amount without the other amounts, and with regard to the delay fine that the fine is assessment ed to the existence and non-existence of acceptance or rejection of the relevant clause. The effect of this is to accept the appeal of the person in charge of the clause of payments of letters of credit and partially accept it in the terms of settlement and delay fine.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (5) of [The Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (a) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)



- Article (63,67) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH.](#)
- Paragraph (3) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH.](#)

### Facts:



The submitted appeal was heard on: 24/01/2023AD, of/ (...), National ID No. (...) as an agent for the appellant company under agency No. (...), on the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (IFR-2022-2252) issued in Case No. (W-2021-68600) regarding the Zakat fees for the years 2016AD, 2017AD and 2018AD, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

First: Defendant/Zakat, Tax and Customs Authority's decision against the Plaintiff is overturned/ ..... Unique number (...). Related to the withholding tax clause at a rate of (15%), unlike the works in progress in the subject matter of the lawsuit.

Secondly: Plaintiff's other objections are dismissed/(.....) Unique number (...). on the decisions of the Defendant/Zakat, Tax and Customs Authority regarding the assessment at issue.

Since this decision was not accepted by the Taxpayer (...), he submitted an appeal petition which the Circuit reviewed, where the Taxpayer's appeal concerns the clause (letter of credit payments). The Taxpayer clarified that the Authority subjected letter of credit payments to withholding tax, where the company provided several supporting documents for this clause such as the auditor's report clarifying the nature of transactions related to letter of credit payments that were made with company (...), and letters of credit issued by the bank for each transaction, and confirmation statement from local suppliers, and invoices issued by local suppliers that support the purchases, and a detailed statement showing details of documentary credit amounts, suppliers, related invoices, payment dates, and amounts for each transaction. These submitted documents are sufficient to prove that the company paid the principal amount and there is no consideration for this financing (interest). He indicated that the company entered into a turnkey project with company (...), where within the scope of work, mobile network towers were supplied and installed. Since the project was of great value and the tower supply included huge investments, (...) company for contracting and technology agreed with tower supplier and other material/goods suppliers to open a "Letter of Credit" for them and the suppliers agreed to this. Since the company (...) Contracting and Technology did not have any banking facilities in the Kingdom of Saudi Arabia, the company has agreed with its sister company in Lebanon, a company (...) Which has good banking facilities from banks in Lebanon to open a letter of credit from Lebanese banks to local material/goods suppliers in Saudi Arabia. Accordingly, (Lebanese sister company) opened a letter of credit to all suppliers and agreed to make payments on behalf of (...). Later, the company (...) For contracting and Technology Invoices from local suppliers When payments

are made through the letter of credit, the company settles the local suppliers with a credit balance of (...), and upon collection from the company (...). The value of the invoices of local suppliers shall be settled with the account of the relevant authority (...) at the cost price, and the company shall not bear or pay any interest to the non-resident entity as indicated in the agreement. In addition, the company has provided the authority with a full series of transactions starting from the purchase order from the company (...), and L/C documents for local suppliers along with invoices and statement of accounts, in addition to debit notes from (...) to LC payments. With regard to the Taxpayer's appeal on the clause (settlement for 2018AD), the Taxpayer explained that the Authority subject the settlement of accounts to withholding tax, as this movement in the trial balance is a corresponding restriction for the reclassification of accounts and the movements of the credit balance from supply accounts. This was just a reclassification of balances from supply accounts using the corresponding entries, by transferring balances of SAR (1,305,776.21) from account No. (...) To Account No. (...) And a balance of (406,965) Saudi riyals from account No. (...) To Account No. (...), to pay a local supplier on behalf of (...). The amount of (31,772.90) Saudi riyals and the payment of visit visa stamp fees in the amount of (4,500) Saudi riyals according to the trial balance and the movement of related parties presented. Documents supporting this credit balance for the supply of goods have been previously submitted to the Authority. With regard to the Taxpayer's appeal on the clause (delay fine), the Taxpayer stated that the Authority imposed a delay fine on the unpaid tax differences on the regular date based on paragraph (a) of Article (77) of the Income Tax Law. Whereas, it explained that the matters discussed above are the subject of a technical dispute between the Taxpayer and the Authority, and therefore any additional withholding tax arising from it must not be subject to the delay fine, and therefore the Taxpayer is required to accept its appeal and reverse the decision of the Adjudication Circuit on the clauses subject to appeal.

on Wednesday, 28/02/2024, the First Appellate Circuit for Income Tax Violations and Disputes met via video conferencing in accordance with the procedures for remote video litigation, based on the provisions of Article 15, Clause 2 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit did not find it necessary for the parties to the appeal to be present, the Circuit decided to close the pleadings and reserve the case for adjudication.

The submitted appeal was heard on: 24/01/2023, of/ (...), National ID No. (...) as an agent for the appellant company under agency No. (...), on the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (IFR-2022-2252) issued in Case No. (W-2021-68600) regarding the Zakat fees for the years 2016AD, 2017AD and 2018AD, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:



First: Defendant/Zakat, Tax and Customs Authority's decision against the Plaintiff is overturned/ ..... Unique number (...). Related to the withholding tax clause at a rate of (15%), unlike the works in progress in the subject matter of the lawsuit.

Secondly: Plaintiff's other objections are dismissed/(.....) Unique number (...). on the decisions of the Defendant/Zakat, Tax and Customs Authority regarding the assessment at issue.

Since this decision was not accepted by the Taxpayer (...), he submitted an appeal petition which the Circuit reviewed, where the Taxpayer's appeal concerns the clause (letter of credit payments). The Taxpayer clarified that the Authority subjected letter of credit payments to withholding tax, where the company provided several supporting documents for this clause such as the auditor's report clarifying the nature of transactions related to letter of credit payments that were made with company (...), and letters of credit issued by the bank for each transaction, and confirmation statement from local suppliers, and invoices issued by local suppliers that support the purchases, and a detailed statement showing details of documentary credit amounts, suppliers, related invoices, payment dates, and amounts for each transaction. These submitted documents are sufficient to prove that the company paid the principal amount and there is no consideration for this financing (interest). He indicated that the company entered into a turnkey project with company (...), where within the scope of work, mobile network towers were supplied and installed. Since the project was of great value and the tower supply included huge investments, (...) company for contracting and technology agreed with tower supplier and other material/goods suppliers to open a "Letter of Credit" for them and the suppliers agreed to this. Since the company (...) Contracting and Technology did not have any banking facilities in the Kingdom of Saudi Arabia, the company has agreed with its sister company in Lebanon, a company (...) that has good banking facilities from banks in Lebanon to open a letter of credit from Lebanese banks to local suppliers of materials/goods in Saudi Arabia. Accordingly, I opened (...) Letter of Credit for all suppliers and agreed to make payments on behalf of (...) Contracting & Technology. Later, the company (...) Contracting and Technology has invoices from local suppliers and when payments are made through the letter of credit, the company settles the local suppliers with a credit balance (...), and upon collection from the company (...) The value of the invoices of local suppliers shall be settled with the account of the relevant authority (...) At the cost price, the Company shall not bear or pay any interest to the non-resident entity as indicated in the Agreement. In addition, the Company has provided the Authority with a complete series of transactions starting from the purchase order from (...) Company, and the letter of credit documents for local suppliers along with invoices and statement of accounts, in addition to the debit notes from (...) to LC payments. With regard to the Taxpayer's appeal on the clause (settlement for 2018), the Taxpayer explained that the Authority subject the settlement of accounts to withholding tax, as this movement in the trial balance is a corresponding restriction for the reclassification of accounts and the movements of the credit balance from supply accounts. This was just a reclassification of balances from supply accounts using the corresponding entries, by transferring balances of SAR



(1,305,776.21) from account No. (...) To Account No. (...) And a balance of (406,965) Saudi riyals from account No. (...) To Account No. (...), to pay a local supplier on behalf of Company (...) The amount of (31,772.90) Saudi riyals and the payment of visit visa stamp fees in the amount of (4,500) Saudi riyals according to the trial balance and the movement of related parties presented. Documents supporting this credit balance for the supply of goods have been previously submitted to the Authority. With regard to the Taxpayer's appeal on the clause (delay fine), the Taxpayer stated that the Authority imposed a delay fine on the unpaid tax differences on the regular date based on paragraph (a) of Article (77) of the Income Tax Law. Whereas, it explained that the matters discussed above are the subject of a technical dispute between the Taxpayer and the Authority, and therefore any additional withholding tax arising from it must not be subject to the delay fine, and therefore the Taxpayer is required to accept its appeal and reverse the decision of the Adjudication Circuit on the clauses subject to appeal.

on Wednesday, 28/02/2024AD, the First Appellate Circuit for Income Tax Violations and Disputes met via video conferencing in accordance with the procedures for remote video litigation, based on the provisions of Article 15, Clause 2 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit did not find it necessary for the parties to the appeal to be present, the Circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:



Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and with regard to the Taxpayer's appeal on the clause (payments of letters of credit), where the Taxpayer's appeal lies on the financing provided by the sister company in Lebanon (Company (...)) to open a letter of credit for them. Based on paragraph (a) of Article Sixty-Eight of the Income Tax Law, which stipulates: "A. Every resident, whether Taxpayer or non-Taxpayer under this Law, and the permanent establishment in the Kingdom of a non-resident, who pays an amount to a non-resident from a source in the Kingdom must withhold tax from the amount paid in accordance with the following rates: Loan yields (5%) ". Based on paragraph No. (1) of Article (63) of the Executive Regulations of the Income Tax Law, which states: "A non-resident shall be subject to tax on any amount obtained from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following prices: Loan yields (5%) ". Based on the above, it becomes clear that the Taxpayer's appeal on the financing provided by the sister company



in Lebanon is a company (...) for the assignee to open a letter of credit for them. Accordingly, I opened (...) Letter of credit for all suppliers and agreed to make payments on behalf of (...) Contracting & Technology. The Taxpayer settles the local suppliers with a credit balance for me (...) Upon collection from the company (...), the value of the invoices of the local suppliers shall be settled with the account of the relevant authority (...) At cost. Accordingly, by reviewing the documents submitted, it is clear that the Taxpayer submitted the financing agreement with the sister company and by reviewing Article No. (7), which stipulates that "the loan financed by (...) shall be repaid upon receipt of payments from customers at the cost at which the same invoice was issued by the local supplier without adding interest to the lending party." Accordingly, it is clear that the Taxpayer did not bear any interest or additional cost, and since the withholding tax is imposed only on the returns of loans, and where the Taxpayer proved that the financing is at cost, which shows that the Authority is not entitled to impose the withholding tax, and since the Authority did not provide evidence that the Taxpayer bears the returns or interest of the loans. (the Taxpayer), resulting in the Circuit's decision to accept the Taxpayer's appeal and annul the decision of the Adjudication Circuit on this clause.

With regard to the Taxpayer's appeal on the clause (Settlement for the year 2018AD), where the Taxpayer's appeal lies on the Authority subjecting the settlement of accounts to withholding tax. Article No. (68) of the Income Tax Law stipulates that: "Every resident, whether expensive or not, under this Law, and the permanent establishment in the Kingdom of a non-resident, and the natural person, who pays an amount to a non-resident from a source in the Kingdom, shall deduct a tax from the amount paid." Based on paragraph (3) of Article (57) of the Executive Regulations of Income Tax, which stipulates the following: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the above, it is clear that the Authority has imposed withholding tax on settlements because the Taxpayer has not clarified the amounts paid to non-resident companies and whether they are in return for services provided inside the Kingdom or not. While the Taxpayer explained that the amounts are related to the payment to a local supplier on behalf of the sister company and the payment of the visit visa stamping fees and the reclassification of accounts by transferring them from one account to another. Accordingly, by reviewing the case file and the documents submitted, it becomes clear that the Taxpayer submitted a debit note (Appendix 16\_p 12,13), from which it became clear that the amount of (31,772.90) riyals related to a payment to a local supplier, and also submitted a debit note in the amount of (4.500) riyals to pay a visa fee on it, which is not subject to withholding tax. As for the remaining amount, the Taxpayer did not provide a breakdown of the nature of the amounts, although there were services provided, as it only submitted the trial balance and daily entries, which did not clarify the nature of the relationship of the related parties. The matter with which the Circuit ends up partially

accepting the Taxpayer's appeal and amending the decision of the Adjudication Circuit to deduct an amount of (36,272.20) riyals.

with regard to the Taxpayer's and the Authority's appeal on the (delay fine) clause, and based on the text of paragraph (a) of Article 77 of the Income Tax Law promulgated by Royal Decree No. M/1 dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: B- Delay in paying the tax due under the Authority's assessment " Based on the foregoing, and by reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the dispute between the two parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the statutory texts, and since the fine is assessment ed to the existence and non-existence of acceptance or rejection of the clause related to it, and therefore the Circuit ends up partially accepting the Taxpayer's appeal on this clause and amending the decision of the Adjudication Circuit regarding the delay fine by dropping the fine from the clauses in which the taxp's appeal was accepted due to the loss of its origin, and the validity of imposing fines on the clauses in which the appeal was rejected to prove its origin.

with regard to the Taxpayer's appeal regarding the remaining clauses at issue in the case, the Circuit is not faulted for adopting the grounds for the decision under appeal without adding to them when it assesses that these grounds make it unnecessary to introduce anything new, because in supporting the decision with the content of these grounds, it is certain that it did not find any objections to the decision that merit a response beyond what is contained in these grounds as the issuing Circuit scrutinized the dispute and reached the conclusion it reached in its operative part, and as this Circuit did not observe any reason to appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject the Taxpayer's appeal and uphold the decision of the Adjudication Circuit with respect to the outcome it reached on the clauses at issue in the case, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

First: Acceptance of the appeal procedurally from the appellant, the company (...), commercial registration (...), unique number (...). Against the decision of the First Circuit to adjudicate income tax violations and





disputes in the city of Riyadh No. (IFR-2022-2252) issued in Case No. (W-2021-68600) related to the tax assessment for the years 2016AD,2017AD,2018AD.

Second: On the merits:

1- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (payments of letters of credit).

2- With regard to the Taxpayer's appeal on the clause (account settlements):

(a) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the settlement for the year 2017AD.

(b) Accepting the appeal of the partially Taxpayer and amending the decision of the Adjudication Circuit in relation to (the 2018AD settlement clause).

3- accepting the Taxpayer's appeal in part and amending the decision of the Adjudication Circuit with regard to the delay fine clause.

This decision is considered final according to the provisions of Articles 47 and 48 of the rules of operation of the committees for adjudicating tax violations and disputes.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-171482

Case No. I-2023-171482

### Keywords

Income Tax -Tax Base and Tax Rates - Internal Purchases - Acceptance of Taxpayer Appeal

### Summary:

The Taxpayer's objection to the decision of the Second Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ISR-2022-1854), where its appeal against the clause (other expenses) lies in its submission of the statement of account in addition to the supporting documents for each clause separately, and the clause (basic salaries and housing allowance) in its confirmation that all that was claimed in the tax return under the clause of salaries, wages and bonuses correspond, and the clause (internal procurement) in that the account of purchases locally corresponds to what was claimed in the tax return under the clause of local purchases. Whereas, it has been proven to the Appeal Committee in view of the statements of accounts and invoice samples that expenses were incurred in addition to the attached tax return in the cost of goods sold, which shows that local purchases were detailed in the amount of (5,365,767.19 riyals), which shows the grounds for the discrepancy of the amounts attached in the financial statements with the tax return. Consequently; accepting the Taxpayer's appeal and canceling the decision of the adjudication authority.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:

the appeal filed on 26/01/2023AD, from (...), National ID No. (...) In its capacity as a legal representative of the appellant company under the Memorandum of Association, on the decision of the Second Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ISR-2022-1854) issued in Case No.

(1 – 2021-73793) related to the tax assessment for the year 2018, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

First: accepting the lawsuit filed by the Plaintiff / ... company, Commercial Registration No. (...), against the Defendant / Zakat, Tax and Customs Authority, procedurally.

Secondly: On the merits:

1- Rejection of the lawsuit in relation to an internal procurement clause.

2- Rejection of the lawsuit in relation to another clause of expenses.

3- With regard to the clause (basic salaries and housing allowance), the amendment of the Defendant's procedure to accept the deduction of additional wage expenses in the amount of (1,340,333) riyals. He rejected the lawsuit regarding the expenses of salaries, wages, bonuses and the like in the amount of (4,372,693) riyals and the expenses of allowances in the amount of (1,773,854) riyals.

4- With regard to the clause (other benefits for employees), the amendment of the Defendant's procedure to accept the deduction of leave expenses in the amount of (356,856) riyals, and the rejection of the lawsuit in relation to insurance expenses in the amount of (296,352) riyals.

Whereas this decision was not accepted by the Taxpayer (the ... company), it submitted an appeal regulation reviewed by the Circuit, where the Taxpayer's appeal lies on the clause (internal procurement), the Taxpayer explains that the Circuit rejected the objection due to the difference in the value of locally purchased materials between the financial statements and the statements submitted and what it claims to resolve in accordance with the declaration, and would like to emphasize that the account of locally purchased amounting to (5,365,767.19 riyals) (Local Procurement Analysis Facility) corresponds to what was claimed in the tax return under the clause of local procurement (attached), and as for what the Circuit indicated regarding the discrepancy and the value of local procurement in the tax return and the statements submitted with clarification No. (18) The cost of revenues from the financial statements has been clarified by the Taxpayer that the clarification includes the cost of revenues consisting of local procurement and external procurement, which is consistent with what was submitted in the tax return in the amount of (8,123,113 riyals). With regard to clause (other expenses), the Taxpayer explains that the Circuit rejected the objection due to the failure to submit any statements of accounts extracted from the accounting system for the disputed expenses, and that the Taxpayer requests to see Appendix No. (2) (attached), which includes the statement of account for other expenses in addition to the supporting documents for each clause separately.

With regard to the clause (basic salaries and housing allowance), the Taxpayer explains that the Circuit has rejected the lawsuit regarding the expenses of salaries, wages, bonuses and the like in the amount of (4,372,693 riyals) and the expenses of allowances in the amount of (1,773,854 riyals) for not submitting supporting documents to prove the expense. The Taxpayer confirms that all what was claimed in the tax return under the clause of salaries, wages and bonuses corresponds, and the accounting statements and



their possession of the documents and invoices supporting the above clauses. Accordingly, the Taxpayer requests to see Appendix No. (3), which includes an account statement of the salary expenses and the like, in addition to the supporting documents for each clause separately. With regard to the clause (other benefits for employees), the Taxpayer explains that the circuit rejected the lawsuit regarding the insurance expense in the amount of (296,352 riyals) for not submitting any supporting documents to prove the expense. The Taxpayer confirms that all that was claimed in the tax return under the insurance expense clause is identical, and the accounting statements and their possession of the documents and invoices supporting the clause. Accordingly, the Taxpayer demands to see Appendix No. (4), which includes a statement of account for the insurance expense in addition to the supporting documents, and demands to accept its appeal and overturn the decision of the Adjudication Circuit.

on Wednesday, 13/03/2024AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video conferencing in accordance with the procedures for remote video litigation; based on the provisions of Article 15, Clause 1 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No.: (25711) dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:



Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and with regard to the Taxpayer's appeal on the clause (internal procurement), and where the Taxpayer's appeal lies that the local procurement account corresponds to what was claimed in the tax return under the clause of local procurement, and based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, which stipulates the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. (d) It is not of a capitalist nature."Based on the foregoing, these expenses are considered a deduction award if it is proven that it is an actual expense and supported by supporting documents, and since the dispute over this clause is a documentary dispute,

and by reviewing the attached documents in the case file, it was found that the Taxpayer attached (approved financial statements for 2018AD - analysis of local purchases - statement of account for each clause - sample of invoices and bank receipts), and given the statements of accounts and invoice samples, it is clear that these expenses were incurred in addition to the attached tax return in the cost of goods sold, which shows that local purchases were detailed in the amount of (5,365,767.19 riyals), which explains the grounds for the discrepancy of the amounts attached in the financial statements with the tax return, which ends with the circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit in this clause.

With regard to the Taxpayer's appeal on the clause (basic salaries and housing allowance), and where the Taxpayer's appeal lies in its assertion that all that was claimed in the tax return under the clause of salaries, wages and bonuses are identical, and based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, which stipulates the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. (d) It is not of a capitalist nature."Based on the foregoing, these expenses are considered a deduction award if it is proven that it is an actual expense and supported by supporting documents, and since the dispute over this clause is a documentary dispute, and by reviewing the attached documents in the case file, it was found that the Taxpayer attached (the approved financial statements - a detailed statement of salary expenses and bank transfers in the amount of (4,372,693) riyals and the clause of allowances in the amount of (1,773,854) riyals), and by comparing the attached documents for each month separately with the bank statement for each month, it became clear to the circuit that the balances match, which ends with the circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit in this clause.

With regard to the Taxpayer's appeal on the clause (other benefits for employees), and where the Taxpayer's appeal lies in its assertion that all that was claimed in the tax return under the insurance expense clause is identical, and based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law, which stipulates the following: "The expenses that may be deducted to determine taxable income are: 1- All ordinary and necessary expenses to achieve taxable income, whether paid or due, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. (d) It is not of a capitalist nature."Based on the foregoing, these expenses are considered a deduction award if it is proven that it is an actual expense and supported by supporting documents, and since the dispute over this clause is a documentary dispute, and by reviewing the

documents attached to the case file, it was found that the Taxpayer attached (the approved financial statements for the year 2018- an account statement extracted from the accounting system for insurance expenses for the year 2018- in addition to bank transfers) and after matching the statement of account and bank transfers prove that the Taxpayer incurred those expenses, which ends with the circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit in this clause.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

1- Acceptance of the appeal procedurally, submitted by / ... Company commercial Register No. (...), unique number (...), against the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh City (ISR-2022-1854) issued in Case No. (I-2021-73793) related to the tax assessment for 2018AD.

2- On the merits:

- (a) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (internal procurement).
- (b) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding an clause (other expenses).
- (c) Accepting the appeal of the Taxpayer and canceling the decision of the Adjudication Circuit regarding the clause (basic salaries and housing allowance).
- (d) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding an clause (other benefits for employees).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024-173124

Case No. I-2023-173124

### Keywords

Income tax - Tax base and tax rates - Local purchases included in foreign purchases -Acceptance of the Taxpayer's appeal

### Summary:

The Taxpayer's objection to the decision of the First Circuit for the Adjudication of Income Tax Violations and Disputes in Jeddah Governorate No. (IZJ-2022-2601), where its appeal lies on the clause (local purchases that were mistakenly included in foreign purchases), as it claims that the company included local purchases within the clause of foreign purchases in its approval for 2015AD by mistake, and the clause (external procurement differences (services from associated companies that were mistakenly declared within foreign purchases)), as it claims that the external procurement differences are in fact services provided by non-resident associated companies, not purchases. Whereas, it was proven to the Appeal Committee that the Taxpayer submitted a statement of the names of local suppliers and the amounts of expenses related to them, where it submitted samples of the invoices of (...) It is logical that the total amount of invoices submitted does not match the total value of the clause by virtue of the fact that the invoices represent the same, knowing that the Authority, after reviewing the documents, acknowledged the validity of the invoices, and where the adjudication decision ended by rejecting the objection of the Taxpayer for not submitting the trial balance, knowing that the accounting system does not necessarily allocate separate accounts for both local and foreign purchases, but rather both are classified as purchases, and accordingly, where the Taxpayer submitted the detailed statement and a sample of invoices matching the bulk of the value of the clause. This means accepting the partially assigned appeal and canceling the decision of the Adjudication Circuit.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)



- Paragraph (3) of Article (67) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (1) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:



The appeal submitted on 29/01/2023AD by/ ..., in its capacity as the general manager of the appellant company, and the appeal submitted by the Zakat, Tax and Customs Authority on 31/01/2023AD, against the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2601) issued in Case No. (I-2021-78094) related to the tax assessment for the year 2015, was considered in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

First: Modify the Defendant's action on an external procurement differences clause; in accordance with the merits of the decision.

Secondly: Accept the Plaintiff's objection to the non-approval of the advanced payments paid.

Third: Modify the Defendant's action on the delay fine clause; in accordance with the merits of the decision.

Since this decision was not accepted by the Taxpayer (... Company), he submitted an appeal brief which the Circuit reviewed. The Taxpayer's appeal concerns the clause (differences in external purchases (services from related companies erroneously declared under external purchases)). The Taxpayer referred to what was previously clarified in the company's response memorandum that part of the external purchase differences are in fact services provided by non-resident related companies totaling (26,871,778) Saudi riyals and are not purchases, (as they were included under the external purchases category in the return by mistake) and which were subject to withholding tax as shown in the annual withholding tax return for 2015, where the amounts paid to non-resident related parties for services withheld during the year appear, and part of them in the above amount were declared under the external purchases clause in the company's return by mistake. The company provided an analytical statement for the above clause in addition to supporting invoices alongside reconciliation with the annual withholding tax return. Regarding what the adjudication committee mentioned in its decision about the non-matching of the value of the analytical statement submitted and the total amount appearing in the annual withholding tax return, the company is surprised by what the adjudication committee argued, as the company had previously clarified in its submitted response memorandum that the reason for the difference is due to the fact that part and not the total of the amounts appearing and highlighted in the annual withholding tax return represent the amount of services that were classified as external purchases in the company's return by mistake, where the company provided an analytical statement explaining the part included in the annual withholding tax



return that relates to the amount of the above clause. Accordingly, it is clear that the amount of the above clause represents services that were subjected to withholding tax and actually declared in the annual withholding tax return. Therefore, what was mentioned in the First Circuit's decision about the non-matching of the annual withholding tax return with the amount of the above clause is incorrect. In view of the data and documents submitted, the company believes that there is no regulatory reason to reject this clause as it has provided everything necessary to resolve the documentary dispute regarding it. The company also objects to the decision of the First Circuit of the adjudication committee, as it did not study the company's objection and escalation defenses regarding this clause. The company repeatedly clarified that part of the amounts paid from abroad for services were disclosed among external purchases, and provided the analytical statement for that clause as well as withholding forms. However, the First Circuit rejected approving the clause on the grounds of its non-matching with the withholding forms. The company is surprised by the First Circuit's procedure, as part of those amounts in the withholding forms were classified as external purchases and not all of them, and therefore the value of the clause will not match the amounts declared in the withholding forms. Accordingly, it is clear what confirms the settlement data provided by the company, as the main reason for the difference is the incorrect classification of those expenses in the company's declaration as external purchases, while they represent services provided by external parties and were subject to withholding tax in the monthly withholding forms as shown in the annual withholding tax form. Accordingly, the company considers the validity of this expense as being deductible by a law and documented. With regard to the Taxpayer's appeal on the clause (local purchases that were mistakenly included in the foreign purchases), the Taxpayer explained that the company included local purchases worth (5,760,627) Saudi riyals in the clause of foreign purchases in its approval for the year 2015AD by mistake, and submitted the list of local suppliers that were dealt with, the analytical statement of those purchases, and a sample of supporting documents, where the bulk of them represent what belongs to the institution ... which confirms that the above amount represents local purchases. However, the First Circuit concluded in its decision to accept only part of the value of the above amount according to the value of the sample documents submitted by the company valued at (3,909,441) Saudi riyals and rejected the remaining value of the clause on the grounds of not providing related documents. The company is surprised by what came in the Circuit's decision, as previously clarified, the submitted documents represent a sample of the entire value of the clause, and it is likely that when examining any settlement clause, a sample of documents and invoices is provided to confirm the validity of what came in the settlement and not all documents related to the clause, due to the large number of invoices related to those purchases. Therefore, a sample of documents is provided to prove the validity of the clause and that it is documentarily supported, knowing that the company confirmed to the Authority that it is ready to provide any additional documents that the Authority may request regarding the above settlement and asked the Authority to select any other sample from the analytical statement provided for those purchases so that the company can provide related invoices. However, the Authority ignored the company's request and what it provided of documents and

did not select any additional sample. Accordingly, there is no doubt that the company has complied with what came in paragraph (3) of Article (57) of the Executive Regulation mentioned in the decision in proving the validity of what was stated in its return, and therefore the Authority as well as the adjudication committee may not approve the entire value of the clause on the grounds of not providing all documents. It is logical that the total amount of supporting documents does not match the total value of the clause given that the submitted documents represent only a sample of documents and not all supporting documents, and it is customary for the Authority to examine a sample of documents to prove the validity of any expense. It should be noted that the company provided a sample of invoices from the supplier that represents the largest part of the value of that clause, and accordingly, the entire value of the above clause should be accepted based on the sample documents provided, which were verified by the adjudication committee. Referring to what the adjudication committee mentioned about the company not providing the trial balance to confirm matching regarding that clause, the company clarifies that it was never previously requested to provide what was mentioned above, and the company has no knowledge about the reason for the Authority's rejection of that clause. When referring to the Authority's response memorandum previously submitted, it is clear that the Authority did not detail the grounds for its rejection of the above clause and did not request any specific document or sample of documents, but only argued that the submitted documents were insufficient without mentioning what is lacking to prove the validity of that clause. Despite what was mentioned above, the company is surprised by what the adjudication committee argued above, as how is the trial balance linked to confirming that the above amount represents local purchases, as it is not necessary for the accounting system to allocate separate accounts for both local and foreign purchases, but both are classified as purchases without specifying the type of purchases as local or foreign in the details of each transaction when recorded in the system. With regard to the Taxpayer's appeal on the clause (delay fine), where the decision of the adjudication committee decided to amend the Authority's calculation of the delay fine clause on the unassisted tax difference according to what was decided on the clause of foreign purchases, as the delay fine is originally assessment ed, that is, the tax, and lapses with the loss of its original, in accordance with paragraph (1) of Article Sixty-Eight of the Executive Regulations of the Income Tax Law. In this regard, the company wishes to note that the Authority has imposed a delay fine of (1%) for each (30) days of delay calculated from the date of the statutory date of filing the declaration until the date of payment, based on Article (77), paragraph (1) of the current tax law. Accordingly, the company clarifies that the Authority is not entitled to impose a delay fine on the company in accordance with the text of Article (68), paragraph (1) of the Executive Regulations of the Income Tax Law, which states the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: (a) Delay in paying the tax due under the declaration. B-Delay in paying the tax due under the Authority's assessment..." In this regard, the Company clarifies that paragraph (a) of Article (168) of the Executive Regulations of the Law does not apply to the case of the Company, as it has paid the tax due on it under its tax returns for the year in question submitted to the Authority, and paragraph (b) of

the same article does not also apply, as the Company objects to the Authority's claim under its objection letter submitted, which represents the original in imposing the delay fine, and since the Company has rejected and objected to the original, the branch is implicitly rejected. In addition, it must be noted that the Company has approved the tax claim issued by the Authority, the delay fine must be from the date of the Authority's claim and not from the date of submitting the declaration in accordance with Article (68) Paragraph (2) of the Executive Regulations, which states the following: "No, the fine of 1% of the unpaid tax must be calculated if the delay period is not completed thirty days from the due date." Therefore, the due date is the date of issuance of the Authority's claim in the event that the Company approves the claim. In addition, the Company objects to the late payment fine because of a difference in views between the Authority and the Company. The Company believes that the assessment clauses are not subject to tax for the grounds mentioned above. In this regard, the Company would like to confirm that many decisions have been issued in this regard, including, but not limited to, the following: The extraordinary decision No. (968) of 1431AH and the preliminary decision No. (29) of 1432AH, and since those above decisions supported the Taxpayer in not imposing a fine for delaying payment, there is a fundamental difference of views. Many decisions were issued under the new tax law, which supported the Taxpayer in the absence of a fine for delaying payment in the event of a real difference of views with the Authority, and the absence of any indication of bad faith on the part of the Taxpayer. It should be noted that many decisions were issued that ruled to calculate the fine for delaying payment starting from the date of the final decision and not from the date of submitting the declaration. Several judgments were also issued by the Board of Grievances that confirmed the inadmissibility of imposing a fine for delaying payment based on the provisions of Sharia and the system of government in the Kingdom. Such judgments include, but are not limited to, the judgment of the Board of Grievances in Administrative Case No. (899/1/S) of 1437AH. Accordingly, the Taxpayer demands the acceptance of its appeal and the reversal of the decision of the Circuit of Settlement of the clauses subject of its appeal. This decision was also not accepted by the Authority, so it submitted an appeal regulation that was reviewed by the Circuit, where the Authority's appeal lies on the clause (delay fine). The Authority clarified that the delay fine was imposed on unpaid tax differences on the regular date based on Article No. (77), Paragraph (A) of the Income Tax Law, which stipulates : (In addition to the fines mentioned in Article 76 of this Law and in paragraph (b) of this Article , the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay, and this includes the delay in the payment of the tax required to be withheld and the accelerated payments calculated from the date the tax is due to the date of payment) ,as well as based on Article (68) Paragraph (1/b) of the Executive Regulations of the Income Tax Law, which stipulates: (To the fines mentioned in the previous Article (1%) of the unpaid tax shall be added for every thirty days of delay in the following cases, including what is stated in the paragraph: - b- Delay in the payment of the tax due under the assessment of the Authority), and accordingly, the Authority demands the acceptance of its appeal and the reversal of the decision of the Adjudication Circuit regarding this clause.

on Sunday, on: 17/03/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via video communication in accordance with the procedures of remote video litigation; based on the provisions of clause no:(2) of Article Fifteen of the Rules of Work of the Committees for Adjudicating Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441 AH; after reviewing the appeal submitted by the parties to the case, and after examining the contents of the case file, the circuit decided that the case has become ready for adjudication and issuing the decision on its subject matter, and since the circuit found nothing to require the presence of the parties to the case, the circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and with regard to the Taxpayer's appeal on the clause (differences in external purchases (services from associated companies that were mistakenly declared within external purchases)), where the Taxpayer's appeal lies in the appeal of the Adjudication Circuit's rejection of its objection to the clause in dispute, as it claims that the differences in external purchases are in fact services provided by non-resident associated companies and not purchases. Based on paragraph No. (3) of Article (57) of the Executive Regulations of the Income Tax Law, which stipulates the following: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the foregoing, the statement of imports issued by the General Authority of Customs is a basic presumption from a neutral third party, and by looking at the case file, it becomes clear that the Authority's action to amend the results of the Taxpayer's business is due to differences in the value of imports listed in the Taxpayer's declaration compared to imports according to the customs statement, and by looking at the case documents and the defenses they contain, it becomes clear that the Taxpayer submitted an analytical statement that included the amounts that the Taxpayer indicated as amounts that were wrongly declared within foreign purchases and paid the withholding tax for them. By comparing the analytical statement with the withholding tax declaration attached to the same file, it becomes clear that it submitted its declaration of withholding tax and it attached samples of invoices in the amount of (744,606) US dollars, or an amount of (2,793,277.72) Saudi riy, and an invoice in the amount of (4,195,267) US dollars, or an amount of (15,747,914) Saudi riy, and by comparing the attached analysis with the with the with the withholding tax

declaration submitted by the Taxpayer it was found that they were already declared in the annual return, where it became clear that the main reason for the difference is the incorrect classification of those expenses in the company's return as external purchases. This is not affected by the Authority's argument regarding the non-matching of the value of the submitted analytical statement with the total amount shown in the return, as it is possible that part of the amounts shown in the return represent the amount of services that were misclassified as evidenced in the invoice samples. Consequently, the Circuit concludes by accepting the Taxpayer's appeal and canceling the Adjudication Circuit's decision regarding this clause.

With regard to the Taxpayer's appeal on the clause (local procurement was mistakenly included in the foreign procurement), where the Taxpayer's appeal lies in the appeal against the dismissal of its objection on the clause in dispute, as it claims that the company included local procurement under the clause Foreign procurement in its approval for 2015 AD by mistake. Based on the foregoing, the import statement issued by the Zakat, Tax and Customs Authority is considered a primary presumption from a neutral third party. Upon reviewing the case file, it appears that the Authority's procedure to adjust the Taxpayer's business results is due to differences in the value of imports listed in the Taxpayer's return compared to imports according to the customs statement. Upon reviewing the documents attached to the case file, it is evident that the Taxpayer submitted a statement with the names of local suppliers and the amounts of expenses related to them, where he provided samples of invoices from ... establishment amounting to (1,204,782.90) riyals and (646,402) riyals. It is logical that the total amount of the submitted invoices does not match the total value of the clause given that the invoices represent a sample, noting that the Authority, after reviewing the documents, acknowledged the validity of the invoices. Whereas the adjudication decision concluded by rejecting the Taxpayer's objection for not submitting the trial balance, knowing that it is not necessary for the accounting system to allocate separate accounts for both local and foreign purchases, but rather both are classified as purchases. Therefore, since the Taxpayer submitted the detailed statement and a sample of invoices matching the larger part of the clause's value, the Circuit concludes by partially accepting the Taxpayer's appeal and amending the Adjudication Circuit's decision regarding this clause.

with regard to the Taxpayer's and the Authority's appeal on the (delay fine) clause, and based on the text of paragraph (a) of Article 77 of the Income Tax Law promulgated by Royal Decree No. M/1 dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income

Tax Law: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these regulations, including cases that are contested, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on the foregoing, and by reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the end date of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the dispute between the parties is a documentary dispute, and it did not arise from a significant difference in the interpretation of the statutory texts, which ends with the Circuit amending the decision of the Adjudication Circuit regarding this clause.

Regarding the Taxpayer's and the Authority's appeals concerning the remaining clauses subject to the case, since there is no reproach upon the circuit for adopting the grounds of the contested decision without adding to them, whenever it determines that those grounds are sufficient and obviate the need for presenting anything new, because in its endorsement of them with what those grounds contained, it is confirmed that it did not find in what was directed against the decision in terms of challenges anything that deserves a response beyond what those grounds included. Given this, and since it is established that the appealed decision regarding the dispute concerning the contested clauses came in accordance with the valid grounds upon which it was based and which are sufficient to support its ruling, as the circuit that issued it undertook to examine the core of the dispute therein and concluded regarding it with the result it reached in its operative part. Since this circuit has not observed anything that requires correction or comment regarding it in light of the defenses raised before it, this circuit concludes by rejecting the Taxpayer's appeal and rejecting the Authority's appeal and upholding the adjudication circuit's decision under appeal in the result it reached regarding the remaining clauses subject to the case, based on its grounds.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

First: Accepting the appeal procedurally from the Taxpayer/ Company..., commercial registration (...), unique number (...) The appeal submitted by the General Authority of Zakat and Tax against the decision of the first circuit regarding violations and disputes of income tax in Jeddah with number (IZJ-2022-2601) issued in case number (I-2021-78094) related to the tax assessment for the year 2015AD.

Second: On the merits:

1- With regard to the Taxpayer's appeal on the clause (external procurement differences):



- (a) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (foreign purchases made in the name of the customer).
- (b) Accepting the appeal of the partially assigned person and amending the decision of the Adjudication Circuit regarding the clause (services from associated companies that were mistakenly declared within foreign procurement).
- 2- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (purchases and other expenses).
- 3- Accepting the partially Taxpayer's appeal and amending the decision of the Adjudication Circuit and rejecting the Authority's appeal in relation to the clause (local procurement was mistakenly included in the foreign procurement).
- 4- Amending the decision of the Adjudication Circuit regarding the clause (delay fine).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-176788

Case No. I-2023-176788

### Keywords

Income Tax - Tax base and tax rates - Deduction of accelerated tax installments - Acceptance of the Authority's appeal

### Summary:

the Zakat, Tax and Customs Authority's objection to the decision of the Third Circuit for adjudicating income tax violations and disputes in Riyadh (IFR-2022-6686) regarding the tax assessment for 2014AD. the Authority's appeal lies in the (delay fine) clause, where it argued that the imposition of a delay fine on unpaid tax differences is valid based on Article (77) of the Income Tax Law and Article (68) of its Executive Regulations, asserting that the initial decision contradicted what the Appellate Committees decided in previous decisions, and its appeal lies in the (Accelerated Tax Installment Deduction) clause, where it claims that the Taxpayer is not entitled to deduct an amount previously refunded to the amount of (1,045,123.85) riyals. it also argued that the Taxpayer recovered an amount that had already been deducted, which means that the Taxpayer is not entitled to deduct it again. the Appellate Committee found that the Authority has deducted the amounts paid under the account and the rest of the amount is an overpaid balance that the Taxpayer has already recovered: accepting the Authority's appeal and canceling the initial decision.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (70) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)
- Paragraphs (a,b) of Article (77) of [The Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)
- Paragraph (1) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)



## Facts:



The submitted appeal was heard on: 08/02/2023AD, from the Zakat, Tax and Customs Authority, on the decision of the Third Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh, No. (IFR-2022-6686) issued in Case No. (I-2020-24144) related to the tax assessment for 2014 AD, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

Acceptance of the Plaintiff's objection/ ... company Ltd. (Commercial Registration No . ...) On the Defendant's/ ZATCA's decision procedurally terms, and objectively to cancel the Defendant's decision.

Whereas this decision was not accepted by the Appellant (Zakat, Tax and Customs Authority), it submitted an appeal regulation that was reviewed by the Circuit, where the Authority's appeal lies on the clause (delay fine), the Authority clarified that the delay fine was imposed on the unpaid tax differences on the regular date based on Article No. (77), Paragraph (A) of the Income Tax Law, which stipulates: (In addition to the fines mentioned in Article Seventy Six of this Law and in paragraph (b) of this Article , the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay , and this includes the delay in paying the tax required to be withheld and the accelerated payments calculated from the date the tax is due to the date of payment) ,as well as based on Article (68) Paragraph (1/b) of the Executive Regulations of the Income Tax Law, which stipulates: (To the fines mentioned in the previous Article (1%) of the unpaid tax for every thirty days shall be added in the following cases, including what is stated in the paragraph: - b- Delay in paying the tax due under the assessment of the interest) , which is calculated after the legal date of submitting the declaration. The Authority's procedure was upheld by Appeal Decision No. (1774) for the year 1438 AH. The Authority's procedure was also upheld by the final judgment issued in Case No. (5245/1/Q) for the year 1438 AH issued by the Nineteenth Administrative Circuit at the Administrative Court in Riyadh and upheld by the Second Administrative Circuit at the Administrative Court of Appeal in Riyadh by Judgment (3404/Q) for the year 1439 AH, where the judgment's reasoning included the following text: (Regarding the delay penalty of (1%) on the result of previous amendments, paragraph (a) of Article (77) of the Income Tax Law stipulated: (a- In addition to the penalties mentioned in Article seventy-six of this law and in paragraph (b) of this article, the Taxpayer must pay a delay penalty of one percent (1%) of the unpaid tax for every thirty days of delay, and this includes delay in paying the tax required to be withheld and advance payments, calculated from the due date of the tax to the payment date). Referring to paragraph (b) of clause (1) of Article (68) of the same law which stated: (Added to the penalties mentioned in the previous article is 1% of the unpaid tax for every thirty days of delay in the following cases: (b- Delay in paying the tax due under the Authority's assessment). The text in this regard is clear and explicit, and since the principle is the validity of the administrative decision, and the Plaintiff did not establish anything to negate that, the principle is that what was remains as it was, therefore the circuit ruled to reject the case). Therefore, the Authority maintains the validity of its procedure. The Authority's

action has been supported by several appeal decisions, including: Appellate Decision No. (1913) of 1439AH, where the grounds for the decision included the following: (.. By informing the Committee of the income tax law issued by Royal Decree No. (M/1) dated 15/1/1425 AH, it was found that paragraph (a) of Article (77) stipulates that "in addition to the fines mentioned in Article seventy-six of this law and in paragraph (b) of this article , the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay, and this includes the delay in the payment of the tax required to be withheld and the accelerated payments calculated from the date the tax is due to the date of payment." In application of the aforementioned statutory text, the Committee considers that a delay fine is imposed on the difference in capital gains tax from the date the tax is due to the date of payment , and thus the Committee rejects the Taxpayer's appeal in its request not to calculate the delay fine in the payment of capital gains tax) as well as the appeal decision No. (1925) of 1439AH It is established and known to all Taxpayers in accordance with the jurisprudence of the previous appeal committees And that the decision of the First Circuit in Riyadh, the subject of the appeal, actually violated the decision of the First Circuit to adjudicate income tax violations and disputes in accordance with Appellate Decision No. (IR-2020-28) in Case No. (ZIW- 2018-1657), which included in the grounds for the decision the text: (Since it is decided that the fine is due from the date of the tax due until the date of payment, and since the nature of the dispute between the two parties is documentary in the clauses subject of the dispute and did not result in a significant difference in the interpretation of the statutory texts, and since the date of the tax due is the date of its knowledge of it or what it is supposed to be aware of it, it is assumed that it knew of it from the date of its maturity, and therefore it was decided that the Circuit has the validity of imposing fines on the clauses for which the appeal was rejected from the date of the tax due date by law), as these clauses from the viewpoint of the Authority are valid and remain and did not lose their origin, in any way the Circuit violated what the work was settled, which is contrary to the requirement Regarding the Authority's appeal concerning the clause (deduction of advance tax installments), the Authority stated that it deducted the advance payments amounting to  $(1,317,838) \text{ riyals} \times 3 = (3,953,513) \text{ riyals}$ , where the Taxpayer made a refund recovery of  $(1,045,123.58) \text{ riyals}$ . Accordingly, the total payment in the Taxpayer's account would be  $(3,953,513 - 1,045,123.58) = (2,908,392.42) \text{ riyals}$  as shown in the Taxpayer's account. From the above, the Authority deducted the amounts paid on account totaling  $(2,908,390.42) \text{ riyals}$ , while the remaining amount of  $(1,045,123.85) \text{ riyals}$  represents an overpaid balance that the Taxpayer had previously recovered in accordance with the Taxpayer's request letter dated 23/4/1440 AH corresponding to 30/12/2018AD, and the form for requesting refund of overpaid taxes and penalties, which was refunded on 12/03/2019AD. Whereas the Circuit's decision came to cancel the Defendant's (Authority's) decision, and whereas this procedure will cause the deduction of an amount that does not exist with the Authority for recovery by the Taxpayer, the Authority therefore confirms that the Taxpayer is not entitled to deduct an amount that was previously recovered amounting to  $(1,045,123.85) \text{ riyals}$ . There is a statement proving the disbursement of the check in the amount of  $(1,045,123.58) \text{ riyals}$  deducted from the Authority's account. Accordingly, the Authority

requests acceptance of its appeal and overturning of the Adjudication Circuit's decision regarding the clauses under appeal.

on Wednesday, 15/05/2024AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video conferencing in accordance with the procedures for remote video litigation; based on the provisions of Article 15, Clause 1 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No.: (25711) dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and with regard to the Authority's appeal on the clause (delay fine), and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these regulations, including cases that are contested, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on the foregoing, and since the delay fine is calculated from the date of the end of the deadline for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the dispute between the two parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the statutory texts, which shows the validity of the Authority's procedure for imposing the delay fine from

the due date on the clauses in which the Taxpayer's objection was rejected, and the delay fine on the clauses in which the Authority's decision was canceled due to the forfeiture of the original taxation, which ends with the Circuit partially accepting the Authority's appeal and amending the decision of the Adjudication Circuit regarding this clause.

With regard to the Authority's appeal regarding the clause (deduction of accelerated tax installments), where the Authority's appeal lies in the appeal against the acceptance of the adjudicator's objection to the disputed clause, as it claims that the Taxpayer is not entitled to deduct an amount previously recovered amounting to (1,045,123.85) riyals. Based on the above, it is clear that the dispute lies in determining the amounts paid under the account from the total amounts due as a result of the tax assessment for the year 2014AD. Upon reviewing the documents submitted by the Taxpayer, which included an analytical statement of the tax liability imposed in accordance with the payment invoices/amended returns and copies of the accelerated tax receipts paid, in the amount of (1,317,838) riyals as a first instalment on 22/5/2014AD; and a second instalment of the same amount on 21/9/2014AD and 13/1/2015AD, with a total amount paid of (3,953,514) riyals. Upon reviewing the documents submitted by the Authority, it appears that the Authority deducted the amounts paid under the account, totaling SAR 2,908,390.42. The remaining amount of SAR 1,045,123.85 is an overpayment, as the agent had previously recovered it in accordance with the agent's request letter dated 23/4/1440 AH, corresponding to 30/12/2018 AD, and the form for requesting the recovery of overpaid taxes and fines, and it was recovered on 12/03/2019 AD, as stated in the Authority's appeal statement. The Circuit therefore accepts the Authority's appeal and overturns the decision of the Circuit on this point.

Regarding the Authority's appeal regarding the clause (depreciation differences) and the clause (undiscountable expenses), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the case is set, the content of the claim and the answer must be monitored before the agreement is recorded, taking into account that the origin of the case is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or Circuit, provided that the merits of the case or some of it is among those agreed upon." Based on the foregoing, and where this Circuit has established the Authority's request to leave the appeal as stated in the letter issued by the Authority in the supplementary memorandum, which includes the following: "The Authority wishes to inform the Honorable Circuit that its appeal with regard to the above clause specifically, and the consequent procedures for this clause as per the terms of the decision reached by the Adjudication Circuit, is left to its discretion." therefore, the Circuit shall accept the abandonment of the litigation.



On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

1- Acceptance of the appeal procedurally from the Zakat, Tax, and Customs Authority against the decision of the third circuit regarding violations and disputes of income tax in Riyadh numbered (IFR-2022-6686) issued in case number (I-2020-24144) related to the tax assessment for the year 2014 AD.

2- On the merits:

- a. Accepting the abandonment of litigation regarding the Authority's appeal on the (consumption differences) clause.
- b. Accepting the abandonment of the litigation regarding the Authority's appeal on the clause (non-deductible expenses).
- c. Accepting the Authority's appeal in part and amending the decision of the Adjudication Circuit with regard to the delay fine clause.
- d. Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause (deduction of accelerated tax installments).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024-176564

Case No. W-2023 -176564

### Keywords

Income tax-Tax base and tax rates-Withholding tax on other payments-Acceptance of Taxpayer's appeal

### Summary:

the Taxpayer's appeal against the decision of the First Circuit of Income Tax Violations and Disputes in Dammam No. (IZD-2022- 2580), where it claims to have submitted a detailed file of salary payments to the Authority, where its appeal is based on the clause (withholding tax on salaries) as it claims that it submitted a detailed file of salary payments to the Authority, the clause (withholding tax on technical, consulting and administrative services) as it claims that it has already deducted the withholding tax, and the clause (delay fine) as it claims that it arose from a difference of opinion between him and the appellant and did not arise from deliberate non-payment of the dues the Taxpayer claims that the delay fine should not be calculated until the tax due becomes final for the year 2017AD, and the clause (Withholding tax on other payments for the year 2017AD) as it claims that it is not aware of the basis of these payments and the details submitted to the Authority did not include any amount equal to SAR (936,228). the details provided by the Taxpayer to the Authority, on which the Authority based its withholding tax, did not include this amount, since the Taxpayer requested the Authority to provide him with the basis for its withholding tax, and since the Authority, in its reply memorandum to the Taxpayer's appeal, did not clarify the basis for its withholding tax on other payments in the amount in dispute. Consequently; accepting the Taxpayer's appeal and canceling the decision of the adjudication authority.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (1) of Article (63) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

## Facts:



the appeal filed on 07/02/2023AD, by (...), National ID No. (...), as agent for the appellant company under power of attorney no. (...) was considered And the lawyer's license No. (...), and the Zakat, Tax and Customs Authority, on the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2580) issued in Case No. (W-2021-42672) related to the tax assessment for the year 2017AD, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

1. Reject the Plaintiff's objection regarding the withholding tax clause imposed on salaries.
2. Cancel the Defendant's decision regarding the clause of withholding tax imposed on the loan interest.
3. Modify the Defendant's decision regarding the withholding tax clause imposed on the insurance.
4. Cancel the Defendant's decision regarding the withholding tax clause imposed on air tickets.
5. Amending a decision regarding the withholding tax imposed on communications.
6. Reject the Plaintiff's objection regarding the clause of withholding tax imposed on marketing services.
7. Reject the Plaintiff's objection regarding the withholding tax clause imposed on technical, advisory and administrative services.
8. Reject the Plaintiff's objection regarding the withholding tax clause imposed on other matters.
9. Amendment of the Defendant's procedure regarding the delay fine.

since this decision was not accepted by the parties, each of them filed a list of appeals, which included the following:

With regard to the Taxpayer's appeal against the decision of the Adjudication Circuit, its appeal is in relation to the clause (withholding tax on salaries for the year 2017AD), the Taxpayer claims that during the Authority's review of the withholding tax for the year 2017AD, it submitted a detailed file of salary payments to the Authority with a total value of (SAR 2,856,262). However, within the assessment, the Authority subjected an amount of (SAR 2,856,262) to withholding tax on salaries without providing clear details to employees, despite the fact that the Taxpayer addressed the Authority with several requests in this regard in accordance with Article (57) Paragraph (9) of the Executive Regulations of the Income Tax Law, where the Authority must provide details of the amounts calculated so that the company can submit its objection to the assessment and cause such differences. In the absence of such details, the Taxpayer believes that the withholding tax should be imposed on the difference of (SAR 20,537), and accordingly, the Taxpayer hopes from the esteemed Circuit to cancel the withholding tax calculated by the Authority. With regard to salaries (SAR 2,836,262), the Taxpayer would like to clarify that the "Adjudication Committee" rejected the Taxpayer's objection on the grounds that the Taxpayer did not provide sufficient evidence to confirm that

the payments were made for salaries and not for other services. The Taxpayer is working on collecting all documentary evidence and will submit the following documents shown for validity within (Attachment No. 5). The Taxpayer will also submit more documents to support this point in order to confirm its position. With regard to the clause (withholding tax imposed on technical, advisory and administrative services), the Taxpayer claims that during the Authority's review of the withholding tax for 2017, it submitted a detailed file to the Authority regarding the technical services amounting to (93,227 Saudi riyals) as shown in Attachment No. (9). In its assessment of withholding tax, the Authority also included an amount of (451,803 Saudi riyals), which is more than (358,576 Saudi riyals) based on the analytical statement submitted by the Taxpayer. In this regard, the Taxpayer would also like to clarify that the Authority, in assessment ing it, provided only a total amount for technical services, and not all the details of the clause in question were provided. Also, in the details provided to the Authority and provided to the Circuit in the appeal, amendments/credit amounts totalling (SAR 357,708) are clearly shown, which are reflections of the amounts shown above that were not deducted by the Authority in its valuation. If the Authority has deducted it, the total value of technical services must be (93,227 Saudi riyals), and the Taxpayer requests that the negative amounts be considered as a reduction of the total payments in technical services. With regard to subjecting the remaining amount of (SAR 93,227) to withholding tax by the Authority, the Taxpayer explains that it has already deducted withholding tax in the amount of (SAR 36,361) and that the remaining amount of (SAR 56,866) has been paid to local suppliers or for goods from external suppliers in the Kingdom, to which withholding tax does not apply. To prove the above, the Taxpayer collected and submitted documentary evidence within Annex (10). With regard to the clause (withholding tax on other payments for the year 2017AD), the Taxpayer claims that while assessment ing the Authority, it provided details of all payments to non-residents. in its valuation, the Authority assessed withholding tax on (SAR 936,228) as other payments. Whereas, it is not aware of the basis of these payments and the details provided to the Authority did not include any equal amount (SAR 936,228). The Taxpayer also requested the Authority to provide the details of the above amount, however, the Authority did not provide any such details, and with regard to the clause (delay fine), the Taxpayer claims that it arose from a difference of views between him and the appellee (Zakat, Tax and Customs Authority) and did not arise from deliberate non-payment of dues, and the Taxpayer demands not to calculate the delay fine until the due tax becomes final for the year 2017AD, and the Taxpayer also appeals against the clause (withholding tax imposed on insurance), the clause (withholding tax imposed on communications), the clause (grounds for issuing the modified withholding assessment for the year 2017AD) and the clause (withholding tax imposed on maintenance and marketing services), and therefore the Taxpayer requests to overturn the decision of the Adjudication Circuit on the clauses subject to appeal for the above grounds.

The decision was also not accepted by the Zakat, Tax and Customs Authority, which appealed the objectionable decision under an appeal regulation that included its objection to the clause (withholding tax imposed on the loan interest), the clause (withholding tax imposed on insurance), the clause (withholding



tax imposed on air tickets) and the clause (withholding tax imposed on telecommunications). Accordingly, the Authority adheres to the validity and integrity of its action and requests that the decision of the Adjudication Circuit on the appealed clauses be overturned for the grounds provided.

on Thursday, 13/06/2024AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via video conferencing in accordance with the procedures of remote video litigation; based on the provisions of clause no:(2) of Article Fifteen of the Rules of Work of the Committees for Adjudicating Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441 AH; after reviewing the appeal submitted by the parties to the case, and after examining the contents of the case file, the circuit decided that the case has become ready for adjudication and issuing the decision On the merits, so the circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and as for the Taxpayer's appeal regarding the clause (withholding tax on salaries for the year 2017AD), and where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit towards this clause, as it claims to have submitted a detailed file of salary payments to the Authority with a total value of (2,856,262 Saudi riyals). However, within the assessment, the Authority subjected an amount of (SAR 2,856,262) to withholding tax on salaries without providing clear details to employees, despite the fact that the Taxpayer addressed the Authority with several requests in this regard. paragraph (1) of Article 63 of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425AH and amended by Ministerial Decision No. (1/1748) dated 02/20/1427AH, stipulates that "1- A non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates: Royalty or royalty, payments for technical or consulting services or international telephone communication services paid to the head office or an associated company 15%. Paragraph (3) of Article (57) stipulates: "The burden of proving the validity of the revenues, expenses and any other data stated in the Taxpayer's declaration shall fall on the Taxpayer. In the event that the Taxpayer is unable to prove the validity of what is stated in its declaration, the Circuit may, in addition to applying any other statutory sanctions, not permit the expenditure whose validity is not proven by the Taxpayer or make a discretionary assessment according to the point of view of the Circuit in the light of the circumstances and facts related to the case and the information available to the Circuit." Circular No. (8922/9/1438) dated 03/01/1438 AH stipulates in paragraph No. (2) that salaries and



wages are not subject to withholding tax if the controls for considering the contract an employment contract are met, as the paragraph stipulates: "2. Or in return for a work wage resulting from an employment relationship for specific work contracts (whether the contract is for a period of one year or less). This income is not taxable in the Kingdom as salaries and wages. The contract shall be classified as an employment contract if it meets the following controls: The power of the employer to monitor the manner and performance of the work. Determining the working hours and monitoring its times and schedules by the employer. Determine where the service is performed by the employer. Identify other relevant business tools and facilities. Receive work-related guidance from the employer. ...disbursement of their fees and wages at specified dates." Based on the foregoing, and whereas employee salaries paid abroad are not subject to withholding tax because they are amounts arising from an employment relationship for specific employment contracts, but subject to the condition that the employment contract controls are met in accordance with what is mentioned above, and whereas the dispute between the parties is a documentary dispute, and upon reviewing the documents submitted by the Taxpayer including copies of employment information, passport, and explanatory letter from the head office (Attachment 5), it was found that the amounts paid represent payments for managing certain specified positions, and since the submitted documents clarified that the referenced employees are affiliated with the head office and were selected to occupy positions with the Taxpayer. Upon reviewing Attachment No. (4) containing the attached contracts, it was found that the disputed amounts represent salaries and wages paid to seconded members. Accordingly, these amounts are considered wages and salaries for employees residing in the Kingdom under employment contracts, and their payment abroad has not been established. What confirms this is that the Taxpayer's appellate decision for the year 2018 AD concluded by accepting his appeal for this clause based on the submitted contracts, which makes these contracts documents that settle the dispute and documentary evidence confirming that wages and salaries are not subject to withholding tax. This leads the Circuit to accept the Taxpayer's objection in the amount of (2,856,799 riyals) for the year 2017AD and cancel the Adjudication Circuit's decision on this clause.

Whereas, with regard to the Taxpayer's appeal on the clause (withholding tax imposed on technical, advisory and administrative services), where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit regarding this clause, as it claims that it has already deducted the withholding tax in the amount of (36,361 Saudi riyals) and that the remaining amount of (56,866 Saudi riyals) has been paid to local suppliers or for goods from external suppliers in the Kingdom, to which the withholding tax does not apply. paragraph (1) of Article 63 of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425AH and amended by Ministerial Decision No. (1/1748) dated 02/20/1427AH, stipulates that "1- A non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates: Royalty or royalty, payments for technical or consulting services or international telephone communication services paid to the head office or an associated company 15%. Paragraph (3) of Article (57) stipulates: "The



burden of proving the validity of the revenues, expenses and any other data stated in the Taxpayer's declaration shall fall on the Taxpayer. In the event that the Taxpayer is unable to prove the validity of what is stated in its declaration, the Circuit may, in addition to applying any other statutory sanctions, not permit the expenditure whose validity is not proven by the Taxpayer or make a discretionary assessment according to the point of view of the Circuit in the light of the circumstances and facts related to the case and the information available to the Circuit." Based on the foregoing, and after reviewing the above arguments and documents from both parties, it becomes clear that the Adjudication Circuit reached its decision as a result of a documentary disagreement that the Taxpayer did not submit the documents supporting its point of view, and by referring to the attachments to the lawsuit, it was found that the Taxpayer submitted attachment No. (10), which included a sample of invoices for services, which included copies of invoices, a selected sample, and by reviewing the samples and comparing them with the attached analytical statement, it was found that the Authority, when assessment ing them, did not take into account the amendment to the value of services (transactions It was amended with a value of (351,291) Saudi riyals. Therefore, the value must be reduced from the total taxable transactions. As for the nature of the services, it was found that they are provided to the Niagara College of Arts, which are considered services provided to a related party. The Circuit ends with partially accepting the objection of the Taxpayer and amending the decision of the circuit of Class to impose withholding tax on an amount of (93,227 riyals) instead of (451,803 riyals) in this clause.

Whereas, with regard to the Taxpayer's appeal regarding the clause (withholding tax on other payments for the year 2017AD), and where the Taxpayer's appeal lies in objecting to the decision of the Classification Circuit regarding this clause, as it claims that it is not aware of the basis of these payments, and the details submitted to the Authority did not include any equal amount (SAR 936,228). paragraph (1) of Article 63 of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425AH and amended by Ministerial Decision No. (1/1748) dated 2/20/1427AH, stipulates that "1- A non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates: any other payments 15%." Article 57(3) also stipulates: "The burden of proving the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration is on the Taxpayer, and in case it is unable to prove the validity of its declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not proven by the Taxpayer or make an estimated assessment according to the Authority's view in light of the circumstances and facts related to the case and the information available to the Authority." Based on the foregoing, after reviewing the arguments and documents presented by the parties in the case file and the withholding tax on other services paid by the College (...) on behalf of the College of (...) (In this regard, the Taxpayer provided an analytical statement of all amounts subject to withholding tax, and with reference to the details provided by the Taxpayer to the Authority, on the basis of which the Authority relied to assessment the withholding tax, it did not include this amount, as the Taxpayer requested the Authority to provide him with the basis for assessment ing it, and since the Authority, in its

reply memo to the Taxpayer's appeal, did not explain the basis for assessment ing it to the other payments with the disputed amount, which leads the Circuit to accept the Taxpayer's objection and annul the decision of the Adjudication Circuit on this clause.

Whereas, with regard to the Taxpayer's appeal on the clause (delay fine), and where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit regarding this clause, as it claims that it arose from a difference of views between it and the appellee and did not arise from deliberate non-payment of dues, and the Taxpayer demands not to calculate the delay fine until the tax due becomes final for the year 2017. Whereas paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states that: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in the payment of the tax to be withheld and accelerated payments, calculated from the date the tax is due to the date of payment." Paragraph (1) of Article 68 of the executive regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425H, stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: (b) Delay in paying the tax due under the Authority's assessment. "Paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law stipulates that: "Unpaid tax means the difference between what the Taxpayer paid on the regular date, and the tax payable under the provisions of the Law. It includes the amendments made by the Authority, which have become final as stated in paragraph (2) of Article Seventy-one of these Regulations, including the cases objected to, where the fine is calculated from the date of the regular date of submission of the declaration and payment." Based on the foregoing, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the dispute between the two parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the statutory texts, and accordingly the Circuit concludes the validity of the Authority's procedure by imposing the delay fine from the due date on the clauses in which the appeal submitted by the Taxpayer was rejected (the ... company) In it, and the delay fine falls on the clauses in which the appeal submitted by the Taxpayer (the ... company) was accepted, due to the fall of the original tax assessment. Accordingly, the Circuit resolves to partially uphold the Taxpayer's appeal and amend the decision of the Adjudication Circuit in this regard.

Whereas, regarding the Authority's appeal regarding the clause (withholding tax imposed on the loan interest), the clause (withholding tax imposed on insurance), the clause (withholding tax imposed on air tickets) and the clause (withholding tax imposed on telecommunications), and whereas Article (70) of the Law of Sharia Pleadings issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or



settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the case is set, the content of the case and the answer must be monitored before the agreement is recorded, taking into account that the origin of the case is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or Circuit, provided that the merits of the case or some of it is among those agreed upon." Based on the foregoing, and where this Circuit has established the Authority's request to leave the appeal as stated in the letter issued by it in the supplementary memorandum containing the following: "The esteemed Authority informs the Circuit of the abandonment of its appeal in relation to the above clauses described in the aforementioned decision, and the procedures resulting from the Authority's appeal, according to the findings of the decision of the Circuit of Settlement in terms of the merits." therefore, the Circuit shall accept the abandonment of the litigation.

regarding the Taxpayer's appeal on the remaining clauses in the case. Whereas there is no fault in the Circuit's adoption of the grounds for the contested decision without adding to them, since it deemed that those grounds were sufficient and did not require the addition of any new information, because in upholding it on the grounds set out in those grounds, it confirmed that it did not find in the objections raised against the decision anything that warranted a response beyond what was contained in those grounds. That being the case, and since it has been established that the decision under appeal in the dispute concerning the contested clauses is consistent with the valid grounds on which it is based and sufficient to support its ruling, as the Circuit that issued it examined the substance of the dispute and reached the conclusion set out in its ruling. This court did not find anything that would warrant correction or comment in light of the arguments presented before it. This court therefore rejects the appeal and upholds the decision of the Circuit of first instance in its entirety with regard to the remaining clauses of the claim, based on the grounds given.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Accepting the appeal procedurally from the Taxpayer/ Company..., commercial registration (...), unique number (...) The appeal submitted by the Zakat, Tax and Customs Authority against the decision of the first circuit regarding violations and disputes of income tax in the city of Dammam with number (IZD-2022-2580) issued in case number (W-2021-42672) related to the tax assessment for the year 2017AD.

2- On the merits:

A- rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the insurance withholding tax clause.



- b- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (withholding tax imposed on telecommunications).
- c- Accepting the abandonment of litigation regarding the Authority's appeal on the (withholding tax imposed on loan interest) clause.
- d- Accepting the abandonment of litigation with regard to the Authority's appeal on the (insurance withholding tax) clause.
- e- Accepting the abandonment of litigation regarding the Authority's appeal on the (withholding tax imposed on travel tickets) clause.
- f- Accepting the abandonment of litigation with regard to the Authority's appeal on the clause (withholding tax on telecommunications).
- g- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (Basis for issuing the amended withholding assessment for 2017AD).
- h- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (withholding tax on salaries for the year 2017AD).
- i- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the withholding tax imposed on maintenance and marketing services.
- J- accepting the Taxpayer's appeal in part and amending the decision of the Adjudication Circuit regarding the clause (withholding tax imposed on technical, consulting and administrative services).
- k- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (withholding tax on other payments for the year 2017AD).
- L- accepting the Taxpayer's appeal in part and amending the decision of the Adjudication Circuit with regard to the delay fine clause.



## Expenses Incurred to Generate Income



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024-194470

Case No. I-2023-194470

### Keywords

Income Tax - Expenses Incurred to Generate Income - Consultancy Fees Expenses - Acceptance of Taxpayer Appeal

### Summary:

The Taxpayer objected to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2023-95300), where its appeal lies on the clause (rental expenses), as it claims that the rental expenses appeared in the trial balance for the ended fiscal year, and the clause (consulting fees expenses) on the basis that these expenses are considered a deduction award, and it submitted the supporting documents and attached the analytical statement of those expenses. Whereas, it was proven to the Appeal Committee that the Taxpayer submitted, within its appeal list, an analytical statement of the total expenses of consulting fees, and it attached the supporting samples for payment in the e-mail. This means accepting the partially assigned appeal and canceling the decision of the Adjudication Circuit.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (70) of [The Sharia Procedure Law promulgated by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)
- Article (77) of [The Income Tax Law issued by Royal Decree No. \(M/1\) dated 15/01/1425AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:

The submitted appeal was heard on: 04/05/2023AD from/ branch of a company..., Commercial Register (...), on the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Riyadh





No. (IFR-2023-95300) issued in Case No. (I-2022-95300) related to the tax assessment for the year 2016AD, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

First: Proof of the end of the dispute of the Plaintiff/ branch of a ... company (unique number...) With the Defendant/Zakat, Tax and Customs Authority, related to the clause of salaries and wages related to an amount of (55,934,230) fifty-five million nine hundred and thirty-four thousand two hundred and thirty riyals, by the Defendant's acceptance of the Plaintiff's requests in this regard.

Secondly: Proof of the end of the dispute of the Plaintiff/ branch of a ... company (unique number...) With the Defendant/Zakat, Tax and Customs Authority, related to the clause of seized amounts in the subject of the lawsuit, by the Defendant's acceptance of the Plaintiff's requests in this regard.

Third: modification of the Defendant/Zakat, Tax and Customs Authority's action against the Plaintiff/...Company. (...) related to the delay fine clause in question, as explained in the grounds.

Fourth: Rejection of the other objections of the Plaintiff/ branch of a ... company (unique number...) on the decision of the Defendant/Zakat, Tax and Customs Authority regarding the assessment at issue.

since this decision was not accepted by the Taxpayer (Company...), it filed a list of appeals, which included the following summary:

The Taxpayer objects to the decision of the Adjudication Circuit in question, it claims that with regard to the clause (salaries and wages), the Taxpayer claims to cancel the circuit's decision on this clause on the basis that its rejection of its objection without giving objective grounds, except that the salaries and wages mentioned in the tax return differ from the salaries in the financial statements. It was not taken into account that the tax return was reclassified where the net income matches between the financial statements and the tax return, and confirms that the salaries and wages were recorded in the books and supported by documents and data and were confirmed by an approved audit office in the Kingdom. Regarding the clause (rental expenses), the Taxpayer requests cancellation of the Circuit's decision concerning this clause, on the basis that rental expenses appeared in the trial balance for the fiscal year ending 31/12/2016AD in the amount of (9,618,625) riyals, all of which are rental expenses related to the branch's activity and these expenses appeared in the financial statements and in the trial balance under account number (630910). The Authority requested a sample of those expenses in the amount of (1,066,270) riyals within the additional data it requested from him, which the branch provided to the Authority. The Authority rejected an amount of (8,611,650) riyals (the difference between the total expense balance as shown in the statements and the sample amount requested by the Authority), despite his ability to prove the amount. Based on the above, he does not agree with the Authority's assessment on this clause and requests to review the detailed statement showing all rental payments and concluded contracts supported by proof of payment of the amounts shown totaling (16,588,468) riyals. As is known, rental expense is linked to the contract

period, and accordingly he calculated what pertains to the year 2016 AD from the total amount paid, which amounts to (9,618,625) riyals. With regard to the clause (Consultancy fees expenses), the Taxpayer requests to cancel the circuit's decision on this clause, on the basis of submitting the supporting documents and attaching the analytical statement related to those expenses and the available supporting documents amounting to (5,049,947) riyals. With regard to the clause (the cost of subcontractors), the Taxpayer claims to cancel the decision of the Circuit on this clause, provided that the value of the cost of subcontractors according to the accounts and the trial balance amounted to (17,949,371) riyals and amounted to (20,899,775) riyals in the tax return. The difference was in the amount of (2,950,404) riyals, and it relates to projects inside the Kingdom and is implemented by subcontractors on its behalf, and it is implemented by local and non-local entities that complete these projects implemented with the government, in addition to their cost. The Authority refunded them to the tax base and considered them undiscountable expenses, despite the fact that the net income declared in the tax return corresponds to the net income declared in the financial statements. With regard to the clause (delay fine), the Taxpayer requests to cancel the decision of the Circuit on this clause on the basis that the additional tax obligations have arisen due to some amendments made by the Authority and not as a result of its failure to pay the amount of tax due on the due date of the tax return.

On Sunday, 04/08/2024AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members, whose names are recorded in the minutes, through video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No. (25711) dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and as for the Taxpayer's appeal regarding the clause (salaries and wages), and based on Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH, it is: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in

paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement occurs before the lawsuit is seized, it is necessary to monitor the content of the lawsuit and respond before the agreement is recorded, taking into account that the origin of the lawsuit is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of a court or another Circuit, provided that the subject of the lawsuit or some of it is among the agreed upon," and based on the foregoing, and where the Taxpayer's appeal is on an amount of (17,188,490) riyals, and where the decision of the Circuit to end the dispute on an amount of (55,934,230) riyals, which was accepted by the Authority, and the rejection of the difference contained between the wages and salaries loaded with the tax return and a certificate from the legal accountant of (4,094,895) riyals, and where the Taxpayer submitted its response with its desire to remove any ambiguity regarding this clause, as it was clearly indicated that the Authority's last action was accepted, which the Circuit ends up to prove the end of the dispute regarding the Taxpayer's appeal on the clause (salaries and wages). Whereas, regarding the Taxpayer's appeal regarding the clause (amounts seized from external suppliers) and based on Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH, it is: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement occurs before the lawsuit is seized, it is necessary to monitor the content of the lawsuit and respond before the agreement is recorded, taking into account that the original lawsuit is within the jurisdiction of the circuit, even if the content of the agreement is within the jurisdiction of another court or circuit, provided that the subject of the lawsuit or some of it is among the agreed upon." Based on the foregoing, the Taxpayer referred to the decision of the Adjudication Circuit to prove the end of the dispute regarding the refund of seized amounts from suppliers in the amount of (6,790,245) riyals, by accepting the Taxpayer to the procedure of the authority, and since the Taxpayer only referred to the clause in its appeal list, and commented in its response by referring to the decision of the Adjudication Circuit to the end of the dispute, with which the circuit ends up dismissing the appeal of the Taxpayer on the clause (amounts seized from external suppliers).

Whereas, with regard to the Taxpayer's appeal regarding the clause (rental expenses), and where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit regarding this clause, it claims that the rental expenses appeared in the trial balance for the fiscal year ending on 31/12/2016AD in the amount of (9,618,625) riyals, all of which are rental expenses related to the branch's activity. These expenses appeared in the financial statements and in the trial balance in account No. (630910), and the Authority requested a sample of these expenses in the amount of (1,066,270) riyals within the additional data it requested from him, which the branch provided to the Authority. The Authority refunded an amount of (8,611,650) riyals (the difference between the total balance of the expense as shown in the lists and the

amount of the sample required by the Authority), despite its ability to prove the amount and based on the foregoing, it does not agree to assessment the Authority in this clause. Based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, which stipulates the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. D - Not to be of a capital nature ", and based on the foregoing, as these expenses are considered a deduction award if it is proven that it is an actual expense and supported by supporting documents, and by informing the Circuit of the case file, it was found that the Taxpayer submitted within its appeal list an analytical statement of the total rental expenses and submitted the supporting samples for payment to several real estate companies, and where the Authority did not address in its response memorandum to the documents submitted in the appeal file, which ends with the Circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (rental expenses).

Whereas, with regard to the Taxpayer's appeal regarding the clause (consulting fees expenses), and where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit regarding this clause; on the basis of submitting the supporting documents and attaching the analytical statement related to those expenses and the available supporting documents amounting to (5,049,947) riyals. Based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, which stipulates the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. D- Not to be of a capital nature ", and based on the foregoing, as these expenses are considered a deduction award if it is proven that it is an actual expense and supported by supporting documents, and by informing the Circuit of the case file, it was found that the Taxpayer submitted within its appeal list an analytical statement of the total expenses of consulting fees in the amount of (5,049,947) riyals, and it attached the supporting samples to be paid in the e-mail, and where the Authority did not address in its response memorandum to the documents submitted in the appeal file, which ends with the Circuit partially accepting the Taxpayer's appeal and amending the decision of the Adjudication Circuit regarding the clause (consulting fees expenses), by deducting the amounts for which the taxp submitted evidence supporting its disbursement.

Whereas, with regard to the Taxpayer's appeal on the clause (the cost of subcontractors), the Taxpayer requests to cancel the decision of the Circuit on this clause, provided that the value of the cost of

subcontractors according to the accounts and the trial balance amounted to (17,949,371) riyals and amounted in the tax return to (20,899,775) riyals and the difference was (2,950,404) riyals, which belong to projects within the Kingdom and are implemented by subcontractors on its behalf, and are implemented by local and non-local entities that complete these projects implemented with the government, in addition to their cost, the expenses and the transfer price difference, as the Authority refunded them to the tax base and considered them undiscountable expenses, despite the fact that the net income declared in the tax return corresponds to the net income declared in the financial statements. Based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, which stipulates the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income.

c. It must be related to the tax year. D - Not to be of a capital nature ", and based on the foregoing, as these expenses are considered a deduction award if it is proven that it is an actual expense and supported by supporting documents, and by informing the Circuit of the case file, it was found that the Taxpayer submitted within its appeal list an analytical statement with a total of (2,950,404.66) riyals and it submitted the supporting samples to pay them, and where the Authority did not address in its response memorandum to the documents submitted in the appeal file, which ends with the Circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (the cost of subcontractors).

Whereas, with regard to the Taxpayer's appeal on the clause (delay fine), the Taxpayer claims to cancel the decision of the Circuit on this clause on the basis that the additional tax obligations have arisen due to some amendments made by the Authority and not as a result of its failure to pay the amount of tax due on the due date of the tax return. Based on paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425AH, which states: "In addition to the fines mentioned in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay, and this includes the delay in the payment of the tax required to be withheld and the accelerated payments, calculated from the date the tax is due to the date of payment." Based on the foregoing, it is clear from the statutory texts that the delay fine is imposed on the Taxpayer as a result of the delay in the payment of the tax due on him, and where the dispute ended in the clauses (salaries and wages) and (amounts reserved from external suppliers), and the acceptance of the Taxpayer's appeal in the clauses (rental expenses) and (the cost of subcontractors), and the amendment of the circuit's decision in the clause (consultancy fees), and therefore what is related to it takes its judgment, and accordingly the matter with which the circuit ends up accepting the Taxpayer's appeal in part by dropping the delay fine on the clauses in which the Taxpayer's appeal was accepted,



On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

1- Acceptance of the appeal procedurally of the applicant/ branch of the ... company, commercial register (...), unique number (...), on the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2023-95300) issued in Case No. (I-2022-95300) related to the tax assessment for the year 2016AD.

2- On the merits:

- (a) Proof of the end of the dispute regarding the Taxpayer's appeal on the clause ( salaries and wages).
- (b) Disregarding the Taxpayer's appeal against the clause (amounts seized from external suppliers).
- (c) Accepting the appeal of the Taxpayer and canceling the decision of the Adjudication Circuit regarding the clause (rental expenses).
- (d) Accepting the appeal of the partially Taxpayer and amending the decision of the Adjudication Circuit regarding the clause (consulting fees expenses).
- (e) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause ( cost of subcontractors).
- (F) accepting the Taxpayer's appeal in part and amending the decision of the Adjudication Circuit with regard to the delay fine clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024- 168755

Case No. I-2023-168755

### Keywords

Income Tax - Expenses Incurred to Generate Income - Repair and Maintenance Expenses - Acceptance of Taxpayer Appeal

### Summary:

The Taxpayer's objection to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2440), where its appeal lies on the clause (repair and maintenance expenses) as it claims that Article (18) of the Tax Law allows deduction of repair and maintenance expenses not exceeding 4% of the net book value of the group of assets. Whereas, the Appeal Committee established that the dispute between the two parties is due to the failure to submit documents (audited financial statements and the tax depreciation schedule), which the Taxpayer indicated to be attached to the appeal case file, and to study the case documents submitted before the adjudication committee. The Taxpayer's addition showed that it submitted the Authority's response to the objected clause in the annexes, which included the Authority's acceptance of resolving the dispute clause for all years. This means; accepting the Taxpayer's appeal and canceling the decision of the adjudicating circuit.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (7) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:

the appeal filed on 10/01/2023AD from ..., National ID No. (...) was considered as an agent for the appellant company under agency No. (...), on the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Dammam City No. (IZD-2022-2440) issued in Case No. (I-2021-47834) related to the

2016AD tax assessment, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

Dismissed the Plaintiff's objection in all clauses subject to dispute in 2016AD.

since this decision was not accepted by the Taxpayer (... company), it filed a list of appeals, which included the following:

As the Taxpayer objects to the decision of the Adjudication Circuit under challenge, he claims that regarding the clause (repair and maintenance expenses), he objects to the Adjudication Circuit's decision, and submits the audited financial statement and a copy of the tax depreciation schedule. The Taxpayer also clarified that Article (18) of the Tax Law allows the deduction of repair and maintenance expenses not exceeding 4% of the net book value of the asset group. However, these repair and maintenance expenses are limited to service costs only and do not include expansions for materials used in repair and maintenance. The Taxpayer also provided details of repair and maintenance expenses which show the amount spent for services and the amount spent for material expenses. Accordingly, the Taxpayer incurred only (47,525) riyals for services while the remainder was paid for purchasing materials for repair expenses. He confirms that this amount does not exceed the 4% ratio to be added to the repair group value balance, as 4% of the total group amounts to (149,670.00) riyals. The Taxpayer added that the Authority's decision issued rejecting the Taxpayer's objection did not state the grounds therein. After further follow-up with the Authority, the Taxpayer received an email from the Authority stating that the Authority accepts the Taxpayer's viewpoint and allowed the deduction of the expenses. The Taxpayer provided a copy of the email dated February 21, 2021AD. The Taxpayer also objects to the clause (salaries and wages), the clause (salary adjustment) and the clause (hospitality expenses). Accordingly, the Taxpayer requests the revocation of the decision of the Adjudication Circuit subject to appeal for the above grounds.

on Sunday, 28/01/2024AD, the First Appellate Circuit for Income Tax Violations and Disputes met via videoconferencing in accordance with the procedures for remote videoconferencing; based on the provisions of Clause 2 of Article 15 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit did not find it necessary for the parties to the appeal to be present, the Circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible



because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and as for the Taxpayer's appeal on the clause (repair and maintenance expenses), and where its appeal lies that Article (18) of the Tax Law allows deduction of repair and maintenance expenses not exceeding 4% of the net book value of the group of assets, however, these repair and maintenance expenses are limited to the cost of service only and do not include expansions of the materials used in repair and maintenance, and the Taxpayer also provided details of repair and maintenance expenses, which show the amount spent for services and the amount spent for material expenses, and therefore the Taxpayer incurred an amount of (47,525) riyals only for services while the rest was paid for the purchase of materials for repair expenses, and confirms that this amount does not exceed 4% to be added to the balance of the value of the repair group. Whereas Article (18) of the Income Tax Law stipulates that: (a) Expenses incurred by the Taxpayer for the repair or improvement of depreciable assets in each group may be deducted. (b) The amount of expenses deductible in accordance with paragraph (a) of this Article for each year shall not exceed four percent (4%) of the balance of the value of the group at the end of that year. (c) The amount exceeding the limit set out in paragraph (b) of this article shall be added to the rest of the value of the group."Paragraph No. (7) of Article (57) of the Executive Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/6/1425AH stipulates: "7- If the Circuit does not approve the Taxpayer's declaration, it shall notify him of the amendments it has made to its tax declaration and the grounds for the amendment ...". Based on the above, it was found that the dispute between the two parties was due to the failure to submit the documents (audited financial statements and the tax depreciation schedule), which the Taxpayer indicated to be attached to the appeal file, and to study the case documents submitted before the adjudication committee. The Taxpayer's addition showed that it submitted the Authority's response to the objected clause in Attachment No. (6), which included the Authority's acceptance of resolving the clause in dispute for all years. The attached and sent mail is considered one of (...) Relationship Manager, which is an official correspondence clarifying the Authority's acceptance of the clause in dispute, which means the end of the dispute over the clause, and does not prejudice the Authority's adherence to the preliminary decision as it accepted the resolution of the clause before the issuance of the preliminary decision, which ends with the Circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit in this clause.

Regarding the remaining clauses subject to the lawsuit, there is no fault with the Circuit in adopting the grounds of the decision under appeal without adding to them when it deemed that those grounds are sufficient without mentioning anything new, because in its endorsement of them with what those grounds contained, it is confirmed that it did not find in what was directed against the decision by way of appeals anything that deserves a response with more than what those grounds contained. Since this is the case, and it is established that the decision subject to appeal regarding the dispute concerning the clauses under



appeal came in accordance with the valid grounds on which it was based and which are sufficient to support its judgment, as the Circuit that issued it undertook to examine the essence of the dispute therein and concluded regarding it with the result it reached in its operative part. Since this Circuit did not observe anything that calls for correction or comment regarding it in light of what was presented by way of defenses raised before it, this leads this Circuit to reject the Taxpayer's appeal and uphold the Resolution Circuit's decision subject to appeal in what it concluded as a result in the remaining clauses subject to the lawsuit, based on its grounds.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Acceptance of the appeal procedurally from the Taxpayer/ ... company, commercial register (...), unique number (...) against the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Dammam (IZD-2022-2440) issued in Case No. (I-2021-47834) regarding the 2016AD tax assessment .

2- On the merits:

- (a) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (repair and maintenance expenses).
- (b) Rejecting the Taxpayer's appeal and upholding the decision of the adjudication circuit with regard to the (salaries and wages) clause.
- (c) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the (salary amendment) clause.
- (d) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (hospitality expenses).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024-173979

Case No. W-2023-173979

### Keywords

Income tax - Expenses Incurred to Generate Income - insurance expenses - accepting the Taxpayer's appeal

### Summary:

The Taxpayer's objection to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2576), where its appeal lies in the clause (withholding tax on insurance for the year 2015AD) to cancel the circuit's decision on this clause on the basis that the company did not submit the supporting documents to prove its claim. Whereas, it was proven to the Appeal Committee by reviewing the statement submitted by the Taxpayer that it is identical to the amount that the Authority subjected to withholding tax, and by reviewing the documents submitted, it was found that documents in the amount of (220,865) riyals were submitted only and by reviewing them, it was found that they were paid to local authorities, and since the documents submitted by the Taxpayer prove the validity of deducting an amount of (220,865) riyals and others, it was not proven documentary because the supporting documents were not submitted, based on paragraph (3) of Article (57) of the Executive Regulations of the Income Tax Law. The result of this is to accept the Taxpayer's appeal and to cancel the decision of the Segregation Circuit regarding the amount of (220,864) riyals for the Taxpayer to submit the supporting documents.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (1) of Article (63) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

## Facts:



the appeal filed on 31/01/2023AD, from / ... company the appeal filed on 31/01/2023 AD by the Zakat, Tax and Customs Authority (ZTA) against the decision of the Third Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (IZD-2022-2576) issued in Case No. (W-2021-42647) related to the 2015AD tax assessment, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudicating Circuit ruled as follows:

1. Modify the Defendant's decision regarding the withholding tax clause imposed on salaries.
2. Modify the Defendant's decision regarding the clause of withholding tax imposed on the loan interest.
3. Reject the Plaintiff's objection regarding the withholding tax clause imposed on the insurance.
4. Amendment of the Defendant's decision regarding the withholding tax clause imposed on air tickets.
5. Amending a decision regarding the withholding tax imposed on communications.
6. Reject the Plaintiff's objection regarding the clause of withholding tax imposed on marketing services.
7. Amendment of the Defendant's decision regarding the withholding tax clause imposed on technical, advisory and administrative services.
8. Reject the Plaintiff's objection regarding the withholding tax clause imposed on other matters.
9. Amendment of the Defendant's procedure regarding the delay fine.

since this decision was not accepted by the parties, each of them filed a list of appeals, which included the following:

With regard to the Taxpayer's appeal against the decision of the Adjudication Circuit, its appeal lies with regard to the clause (withholding tax on salaries for the year 2015AD), as the appellant (company...) Demands the annulment of the Circuit's decision on this clause on the grounds that the result of the adjudication decision is related to the failure to provide sufficient documents to prove that the amounts paid ... In return for acting payments to the service provider and that it is only for salaries, and with regard to the documents, the company would like to clarify that due to the large number of employment contracts, the following documents were submitted within (Attachment 4) to support the position of the company and to consider them. The appellant would like to clarify that it did not receive any previous requests in this regard, while in the Defendant's response (the authority), the authority clarifies that the transactions of related parties were subject to withholding tax at a rate of 15% based on the observation of the General Auditing Bureau, and where the Plaintiff stated that these amounts were transferred to the college...It is in exchange for transactions with related parties in the payments made on behalf of the company in the conduct of normal business, and the authority also found through reviewing the analytical statement submitted by the Plaintiff that there are expenses by their nature that are subject to withholding tax that



have not been subject to them, and it was also found that the same expense was subject twice by subjecting the examiner to the total value of transactions with related parties once through With regard to the clause (withholding tax imposed on the loan interest), as the appellant (... company) requesting the annulment of the Circuit's decision regarding this clause on the basis that the result of the adjudication decision relates to not providing sufficient documents to prove payment of withholding tax on the amount of 331,096 Saudi riyals from the total amount of 360,720 390,327 Saudi riyals, while the remainder relates to banking fees and therefore the amount should be subject to withholding tax. The appellant mentioned that she provided all relevant supporting documents in (Attachment 5) for review, and that the difference of 29,624 Saudi riyals represents banking fees. Accordingly, the appellant would like to note that these fees were paid upon establishment and were not used for the use of funds, therefore withholding tax should not be imposed on them, and reference can be made to what the Authority mentioned in its guidance manuals. Therefore, banking fees are not subject to withholding tax. Meanwhile, in the response of the Defendant (the Authority), the Authority clarifies that related party transactions were subjected to withholding tax at a rate of 15% based on the General Audit Bureau's observation. The Plaintiff stated that those amounts were transferred to ... College and are in exchange for related party transactions in advance payments made on behalf of the company in conducting ordinary business. The Authority also found, through reviewing the analytical statement provided by the Plaintiff, the existence of expenses that by their nature are subject to withholding tax but were not subjected to it. It was also found that the same expense was subjected twice - by the examiner subjecting the total value of related party transactions and once by the Plaintiff. Accordingly, all expenses subject to withholding tax were identified and subjected to withholding tax after excluding what the Plaintiff added to the base and subjected to withholding tax during the year. Through the table, the type of expense subject to tax is clarified (attached table). Based on the foregoing, the Authority maintains the grounds of the preliminary decision supporting the correctness and validity of the Authority's procedure and requests Your Honor to uphold what the decision concluded. With regard to the clause (withholding tax imposed on air tickets), as the appellant (company...) demands the cancellation of the Circuit's decision on this clause on the basis that the result of the adjudication decision relates to the failure to submit sufficient documents to prove the settlement of the withholding tax of SAR 36,280 against SAR 725,760 related to air tickets. The Appellant stated that it withheld the tax within the monthly declaration of SAR 440,151. However, the adjudication committee supported the Authority's action of SAR 285,609 due to the failure to submit the documents. The Appellant indicated that it does not agree with the decision of the Adjudication Circuit that the remaining amounts relate to payments at a local level, either local flights or unrelated travel tickets in the Kingdom of Saudi Arabia , while the Appellant's response against its (the Authority) indicates that the transactions of related parties were subject to a 15% withholding tax based on the observation of the General Auditing Bureau, and where the Plaintiff stated that these amounts were transferred to the College ... Applied Arts and Technology, which is in exchange for transactions with related parties in the payments made on behalf of the company in the normal conduct of



business. The Authority has also found through reviewing the analytical statement submitted by the Plaintiff that there are expenses of a nature that are subject to withholding tax that have not been subject to it. It was also found that the same expense is subject twice by subjecting the examiner to the total value of transactions with related parties and once through the Plaintiff. Accordingly, all expenses that are subject to withholding tax were counted and subject to withholding tax after excluding what the Plaintiff added to the base and subjecting it to withholding tax during the year. Through the table, it is clear the type of taxable expense (table attached). Based on the foregoing, the Authority adheres to the provisions of the preliminary decision in favor of the validity and safety of the Authority's action and requests your Excellency to support the outcome of the decision. With regard to the clause (withholding tax imposed on marketing services), as the appellant (... company) Demands the cancellation of the Circuit's decision on this clause on the basis that the result of the adjudication decision relates to the failure to provide sufficient documents, in which it supported the imposition of a withholding tax of 15% on marketing banks amounting to 1,238,120 Saudi riyals. The Appellant stated that this amount relates to payments to local service providers and a statement is attached to you showing this (Attachment No. 11). Maintenance and marketing services are subject to a withholding tax of 5% and not as assessment ed to it by 15%, knowing that the services were not provided to an associated party when it was mentioned in the Appellee's response (the Authority). The Authority clarifies that transactions to related parties were subject to a withholding tax of 15% based on the observation of the General Auditing Bureau, and where the Plaintiff stated that these amounts were transferred to the College ... Applied Arts and Technology, which is in exchange for transactions with related parties in the payments made on behalf of the company in the normal conduct of business. The Authority has also found through reviewing the analytical statement submitted by the Plaintiff that there are expenses of a nature that are subject to withholding tax that have not been subject to it. It was also found that the same expense is subject twice by subjecting the examiner to the total value of transactions with related parties and once through the Plaintiff. Accordingly, all expenses that are subject to withholding tax were counted and subject to withholding tax after excluding what the Plaintiff added to the base and subjecting it to withholding tax during the year. Through the table, it is clear the type of taxable expense (table attached). Based on the foregoing, the Authority adheres to the provisions of the preliminary decision in favor of the validity and safety of the Authority's action and requests your Excellency to support the outcome of the decision. With regard to the clause (withholding tax imposed on technical and consulting services), as the appellant (... company) Demands the cancellation of the Circuit's decision on this clause on the basis that the result of the adjudication decision is related to the failure to provide sufficient documents, in which it supported the imposition of a withholding tax of 15% on technical and administrative services amounting to SAR 980,030. The Appellant stated that the withholding tax amounting to SAR 35,318 was settled by the Company. The remaining amounts relate to payments made to local service providers who are not subject to withholding tax. When it was mentioned in the Appellee's response (the Authority), the Authority clarifies that transactions to related parties were subject to a 15% withholding tax based on the



observation of the General Auditing Bureau, and where the Plaintiff stated that these amounts were transferred to the College ... It is in exchange for transactions with related parties in payments made on behalf of the company in the normal conduct of business. The Authority has also found through reviewing the analytical statement submitted by the Plaintiff that there are expenses of a nature that are subject to withholding tax that have not been subject to it. It was also found that the same expense is subject twice by subjecting the examiner to the total value of transactions with related parties and once through the Plaintiff. Accordingly, all expenses that are subject to withholding tax were counted and subject to withholding tax after excluding what the Plaintiff added to the base and subjecting it to withholding tax during the year. Through the table, it is clear the type of taxable expense (table attached). Based on the foregoing, the Authority adheres to the grounds for the preliminary decision in favor of the validity and safety of the Authority's action and requests you to support the outcome of the decision. With regard to the clause (Telecommunications Withholding Tax for the year 2015AD), where the appellant (... company) Demands the annulment of the decision of the Circuit on this clause on the basis that the result of the adjudication decision relates to the failure to provide sufficient documents and financial statements to prove the settlement of the withholding tax of 14,295 Saudi riyals, and the appellant wishes to clarify that in accordance with Article 63 of the Regulations of the Kingdom of Saudi Arabia, communications paid to non-residents are subject to 5% and not 15% as assessed by the Authority. You find in Annex No. 7 copies of invoices and other supporting documents proving that the remaining amount of 342,899 Saudi riyals in dispute represents payments to local telecommunications companies in the Kingdom of Saudi Arabia and is not subject to withholding tax, while it was stated in the appellant's response (the Authority) that transactions to related parties were subject to 15% withholding tax based on the observation of the General Auditing Bureau, and where the Plaintiff stated that those amounts were transferred to the college ... It is in exchange for transactions with related parties in payments made on behalf of the company in the normal conduct of business. The Authority has also found, by reviewing the analytical statement submitted by the Plaintiff, that there are expenses of a nature that are subject to withholding tax that have not been subject to it. It was also found that the same expense is subject twice by subjecting the examiner to the total value of transactions with related parties and once through the Plaintiff. Accordingly, all expenses that are subject to withholding tax have been counted and subject to withholding tax after excluding what the Plaintiff added to the base and subjecting it to withholding tax during the year. Through the table, it is clear the type of taxable expense (attached table). Based on the above, the Authority adheres to the grounds for the preliminary decision in favor of the validity and safety of the Authority's action and requests you to support the outcome of the decision. With regard to the clause (withholding tax on other payments for the year 2015AD), as the appellant (company...) Demands the cancellation of the Circuit's decision on this clause on the basis that the Authority's basis is not known to subject the above amount to withholding tax. The Appellant requests the Authority to provide details of the total amount of 83,722 Saudi riyals. The Appellant argued that it is contrary to justice to subject the full amount to withholding tax because there are no full

details shared by the Authority despite the request for details at the first objection with the Authority and at the objection with the Adjudication committee. The Company also states that all disputed payments represent payments to local service providers and are not subject to withholding. The Appellant submitted Appendix No. 10 showing the detailed statement of other payments, while the Appellee's response (the Authority) states that transactions to related parties were subject to withholding tax at a rate of 15% based on the observation of the General Auditing Bureau, and where the Plaintiff stated that these amounts were transferred to the College ... It is in exchange for transactions with related parties in payments made on behalf of the company in the normal conduct of business. The Authority has also found through reviewing the analytical statement submitted by the Plaintiff that there are expenses of a nature that are subject to withholding tax that were not subject to it. It was also found that the same expense is subject twice by subjecting the examiner to the total value of transactions with related parties and once through the Plaintiff. Accordingly, all expenses that are subject to withholding tax were counted and subject to withholding tax after excluding what the Plaintiff added to the base and subjecting it to withholding tax during the year. Through the table, it is clear the type of taxable expense (table attached). Based on the foregoing, the Authority adheres to the grounds for the preliminary decision in favor of the validity and safety of the Authority's action and requests you to support the outcome of the decision. With regard to the clause (grounds for issuing the revised withholding assessment for the year 2015AD), and with regard to the clause (withholding tax on insurance for the year 2015AD), as the appellant (... company) Demands the revocation of the Circuit's decision on this clause on the basis that the Company does not agree with the decision of the Tax Violations and Disputes Adjudication Committee "Adjudication Committee" to support the Authority's view that the withholding tax on the insurance services clause is subject to a rate of SAR 239,546 at a rate of 15% with a value of SAR 35,932 on the basis that the Company did not submit the supporting documents to prove its claim. Accordingly, the company is pleased to submit the supporting documents, which include a copy of the invoices and other supporting documents. In this regard, the company confirms to the esteemed Circuit that the payments are the insurance expenses that have been paid to the local insurance companies (...) and (...) The relevant supporting documents are attached to you in Attachment No. 5. The appellant is also claiming , while it was stated in the appellant's response against it (the Authority). The Authority clarifies that the transactions of related parties were subject to withholding tax at a rate of 15% based on the observation of the General Auditing Bureau, and where the Plaintiff stated that these amounts were transferred to the College ... It is in exchange for transactions with related parties in payments made on behalf of the company in the normal conduct of business. The Authority has also found through reviewing the analytical statement submitted by the Plaintiff that there are expenses of a nature that are subject to withholding tax that have not been subject to it. It was also found that the same expense is subject twice by subjecting the examiner to the total value of transactions with related parties and once through the Plaintiff. Accordingly, all expenses that are subject to withholding tax were counted and subject to withholding tax after excluding what the Plaintiff added to the base and subjecting it to withholding tax





during the year. Through the table, it is clear the type of taxable expense (table attached). Based on the foregoing, the Authority adheres to the grounds for the preliminary decision in favor of the validity and safety of the Authority's action and requests you to support the outcome of the decision. With regard to the clause (delay fine), as the appellant (company...) Demands the cancellation of the Circuit's decision on this clause on the basis of imposing a delay fine for the outstanding tax differences, as it arose from a difference of views between the Appellant and the Appellee (Zakat, Tax and Customs Authority) and did not arise from the Company's deliberate non-payment of dues, and demands that the Plaintiff not calculate the delay fine until the due tax becomes final for the year 2015 when it was mentioned in the Appellee's response (Authority). The Authority imposed the delay fine on the unpaid tax differences on the regular date based on paragraph (a) of Article (77) of the Income Tax Law as well as based on paragraph (1/b) of Article (68) of the Executive Regulations of the Income Tax Law, which is calculated after the statutory date of submitting the declaration in accordance with the statutory requirement.

the decision was not accepted by the Zakat, Tax and Customs Authority, which filed its appeal against the challenged decision by means of an appeal regulation that included the following summary:

With regard to the Authority's appeal against the decision of the Adjudication Circuit, its appeal can be made with regard to the clause (withholding tax on salaries for the year 2015AD), as the Circuit did not ask the Taxpayer for any detailed clarification that proves the validity of what was paid by the Taxpayer, and the Authority did not find any documents attached to this in any way, which makes the decision free to cancel, and the Authority confirms that what was paid by the Taxpayer before the Circuit has no significant face because of its invalidity and because it is not based on evidence that can be relied upon in fact, which the Authority confirms the validity and integrity of its procedure, as the Appellee, when it submitted its objection to the Authority, did not submit these documents related to the clause subject of appeal, and the Authority did not find out on what these documents were based on the fact that these documents belong to the subject of appeal and not others, and whether what the Taxpayer submitted to the Circuit belongs to the year subject of appeal or not, as this was not clarified through him, and whether the Circuit was informed of the approval of the legal accountant on it or not, and the Circuit did not explain how With regard to the clause (withholding tax imposed on the loan interest), as the Circuit did not ask the Taxpayer for any detailed clarification proving the validity of what the Taxpayer paid, and the Authority did not find any documents attached in this regard in any way, which makes the decision worth canceling, and the Authority confirms that what the Taxpayer paid before the Circuit is a face that is considered to be invalid and based on evidence that can be relied upon in fact, which confirms with the Authority the validity and safety of its procedure. it is not clear to the Authority on what basis the Circuit relied on the fact that these documents are related to the clause under appeal and not others, and whether what the Taxpayer submitted to the Circuit is related to the year under appeal or not, as this was not clear from it, and whether the Circuit reviewed the certification of the chartered accountant or not, and the Circuit did not explain how this clause



was reached in a detailed accounting and legal manner, which must be taken into consideration, so the Authority affirms the correctness and integrity of its procedure. With regard to the clause (withholding tax imposed on air tickets), as the Circuit did not ask the Taxpayer for any detailed clarification that proves the validity of what the Taxpayer paid, and the Authority did not find any documents attached in this regard in any way, which makes the decision worth canceling, and the Authority confirms that what the Taxpayer paid before the Circuit has no significant face for its lack of validity and because it is not based on evidence that can be relied upon in fact, which confirms with the Authority the validity and integrity of its procedure. it is not clear to the Authority on what basis the Circuit relied on the fact that these documents are related to the clause under appeal and not others, and whether what the Taxpayer submitted to the Circuit is related to the year under appeal or not, as this was not clear from it, and whether the Circuit reviewed the certification of the chartered accountant or not, and the Circuit did not explain how this clause was reached in a detailed accounting and legal manner, which must be taken into consideration, so the Authority affirms the correctness and integrity of its procedure. With regard to the clause (withholding tax imposed on marketing services), as the Circuit did not ask the Taxpayer for any detailed clarification that proves the validity of what the Taxpayer paid, and the Authority did not find any documents attached in this regard in any way, which makes the decision worth canceling, and the Authority confirms that what the Taxpayer paid before the Circuit has no significant face for its lack of validity and because it is not based on evidence that can be relied upon in fact, which confirms with the Authority the validity and safety of its procedure. it is not clear to the Authority on what basis the Circuit relied on the fact that these documents are related to the clause under appeal and not others, and whether what the Taxpayer submitted to the Circuit is related to the year under appeal or not, as this was not clear from it, and whether the Circuit reviewed the certification of the chartered accountant or not, and the Circuit did not explain how this clause was reached in a detailed accounting and legal manner, which must be taken into consideration, so the Authority affirms the correctness and integrity of its procedure. With regard to the clause (withholding tax imposed on technical and advisory services), as the Circuit did not ask the Taxpayer for any detailed clarification proving the validity of what the Taxpayer paid, and the Authority did not find any documents attached in this regard in any way, which makes the decision free to cancel, and the Authority confirms that what the Taxpayer paid before the Circuit has no significant face for its lack of validity and because it is not based on evidence that can be relied upon in fact, which confirms with the Authority the validity and safety of its procedure. it is not clear to the Authority on what basis the Circuit relied on the fact that these documents are related to the clause under appeal and not others, and whether what the Taxpayer submitted to the Circuit is related to the year under appeal or not, as this was not clear from it, and whether the Circuit reviewed the certification of the chartered accountant or not, and the Circuit did not explain how this clause was reached in a detailed accounting and legal manner, which must be taken into consideration, so the Authority affirms the correctness and integrity of its procedure. With regard to the clause (Telecommunications withholding tax for 2015AD), as the Circuit did not ask the Taxpayer for any detailed clarification that proves the validity

of what the Taxpayer paid, and the Authority did not find any documents attached in this regard in any way, which makes the decision free to cancel, and the Authority confirms that what the Taxpayer paid before the Circuit has no significant face for its lack of validity and because it is not based on evidence that can be relied upon in fact, which confirms with the Authority the validity and safety of its procedure. it is not clear to the Authority on what basis the Circuit relied on the fact that these documents are related to the clause under appeal and not others, and whether what the Taxpayer submitted to the Circuit is related to the year under appeal or not, as this was not clear from it, and whether the Circuit reviewed the certification of the chartered accountant or not, and the Circuit did not explain how this clause was reached in a detailed accounting and legal manner, which must be taken into consideration, so the Authority affirms the correctness and integrity of its procedure. With regard to the clause (delay fine).

on Tuesday, 16/04/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via video conferencing in accordance with the procedures of remote video litigation; based on the provisions of clause no:(2) of Article Fifteen of the Rules of Work of the Committees for Adjudicating Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441AH; after reviewing the appeal submitted by the parties to the case, and after examining the contents of the case file, the circuit decided that the case has become ready for adjudication and issuing the decision on its subject matter, so the circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and as for the Taxpayer's appeal regarding the clause (withholding tax on salaries for the year 2015AD), and based on paragraph No. (1) of Article (63) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425 AH and amended by Ministerial Decision No. (1/1748) dated 20/2/1427AH, on: "1- A non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates: Royalty or royalty, payments for technical or consulting services or international telephone communication services paid to the head office or an associated company. 15% "Paragraph (3) of Article (57) thereof stipulates: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or



make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." - Based on Circular No. (8922/9/1438) dated 3/1/1438 AH, paragraph No. (2) of which stipulates that salaries and wages are not subject to withholding tax if controls are met to consider the contract an employment contract, as the paragraph stipulates: "2. Or in return for a work wage resulting from an employment relationship for specific work contracts (whether the contract is for a period of one year or less). This income is not taxable in the Kingdom as salaries and wages. The contract shall be classified as an employment contract if it meets the following controls: The power of the employer to monitor the manner and performance of the work. Determining the working hours and monitoring its times and schedules by the employer. Determine where the service is performed by the employer. Identify other relevant business tools and facilities. Receive work-related guidance from the employer. ...disbursement of their fees and wages at specified dates." Based on the above, and whereas employee salaries paid abroad are not subject to withholding tax because they are amounts arising from an employment relationship for specific employment contracts, but subject to the condition that the employment contract controls are met in accordance with what is mentioned above, and whereas the dispute between the parties is a documentary dispute, and upon reviewing the documents attached by the appellant including copies of employment information, passport, and explanatory letter from the head office (Attachments S-1 to S-3), it was found that the amounts paid represent payments for managing certain specified positions, and since the submitted documents clarified that the referenced employees are affiliated with the head office and were selected to occupy positions with the appellant. Upon reviewing Attachment No. 4 containing the attached contracts, it was found that the disputed amounts represent salaries and wages paid to seconded members. Whereas these amounts are considered wages and salaries for employees residing in the Kingdom under employment contracts and their payment abroad has not been established, and upon reviewing the Authority's supplementary memorandum, it is evident that the dispute has been resolved regarding the amount of 825,589.57 riyals through the Authority's acceptance of the Taxpayer's appeal. Whereas the Authority indicated its agreement with what the Adjudication Circuit's decision concluded by amending the Authority's procedure and not subjecting the amount of 50,653.61 riyals [to tax], and regarding the remaining amount valued at 2,606,363.43 riyals, and whereas the Taxpayer submitted supporting documents and contracts, it is therefore necessary to partially accept the Taxpayer's appeal and amend the Adjudication Circuit's decision regarding the clause (withholding tax on salaries for the year 2015AD).

Whereas, regarding the Taxpayer's appeal regarding the clause (withholding tax imposed on air tickets), and based on paragraph No. (1) of Article (63) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425 AH and amended by Ministerial Decision No. (1/1748) dated 20/2/1427AH, on: "1. A non-resident shall be subject to tax for any amount obtained from any source in the Kingdom , technical or consulting services or international telephone communication services other than what is paid to the head office or an associated company, rent, air tickets or air or sea freight, distributed



profits, loan proceeds, insurance or reinsurance premium. 5%. Based on the above, and whereas the dispute between the parties to the case is considered a documentary dispute, and upon verification of the submitted documents, it was found that the appellant attached an analytical statement of travel tickets and mentioned in her analysis that she withheld tax on travel tickets paid in the amount of (440,151) Saudi riyals and remitted the withholding tax thereon, and a summary of withholding tax remittance was submitted during the adjudication phase. Whereas the appellant submitted proof of payment of withholding tax regarding the remaining portion in the amount of 285,609 riyals, which the Plaintiff argues represents amounts paid either for purchasing services to which withholding tax does not apply or for purchasing goods from outside the Kingdom, and the Plaintiff was satisfied with submitting some samples (1-6) in addition to a detailed statement of operations not subject to withholding tax valued at 285,609 riyals. Upon examining the attached samples, they are summarized as (hotel accommodation - airline tickets outside the Kingdom - car rental). Whereas the disputed transactions do not meet the conditions stated in paragraph (1) of Article (63) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425 AH, as they relate to local suppliers and services that were provided entirely outside the Kingdom, it is therefore necessary to accept the Taxpayer's appeal and cancel the Adjudication Circuit's decision regarding the clause (withholding tax imposed on travel tickets).

Whereas, regarding the Taxpayer's appeal regarding the clause (withholding tax imposed on marketing services), and based on paragraph No. (1) of Article (63) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425 AH and amended by Ministerial Decision No. (1/1748) dated 20/2/1427AH, on: "1- A non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates: Royalty or royalty, payments for technical or consulting services or international telephone communication services paid to the head office or an associated company .15% ". paragraph (1) of Article 63 of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425AH and amended by Ministerial Decision No. (1/1748) dated 2/20/1427AH, stipulates that "1. A non-resident shall be subject to tax for any amount obtained from any source in the Kingdom, technical or consulting services or international telephone communication services other than what is paid to the head office or an associated company, rent, air tickets or air or sea freight, distributed profits, loan proceeds, insurance or reinsurance premium. 5%. Paragraph (3) of Article (57) stipulates: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the above, and as the dispute lies in the imposition of a withholding tax of (15%) in the amount of (185,718) riyals on marketing services with a value of (185,718) riyals, where the appellant states that the amounts mentioned in assessment ing the authority are not subject to

withholding tax, and by referring to the case file, the appellant attached an analytical statement in the form of (Excel) for marketing services payments with a total amount of (1,238,120) riyals. The appellant submitted samples of invoices and contracts for a value of 1,033,898 riyals for 83.5% of the total amount in dispute and by studying the attached documents shows that the invoices were paid to local suppliers, which necessitates amending the circuit's decision to accept a deduction of 1,033,898 riyals from 1,238,120 riyals contained in assessment ing the authority, which leads the circuit to partially accept the Taxpayer's appeal and amend the circuit's decision regarding the clause (withholding tax on maintenance and marketing services for the year 2015AD).

Whereas, regarding the Taxpayer's appeal regarding the clause (withholding tax imposed on technical and advisory services), and based on paragraph No. (1) of Article (63) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425 AH and amended by Ministerial Decision No. (1/1748) dated 20/2/1427AH, on: "1- A non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates: Royalty or royalty, payments for technical or consulting services or international telephone communication services paid to the head office or an associated company .15% ". Paragraph (3) of Article (57) stipulates: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority."

Based on the above, and where the dispute lies in the imposition of a withholding tax of (15%) SAR 147,005 on technical and advisory services valued at (980,030) SAR, and by reference to the case file, and where the Plaintiff attached an Excel file showing that the technical and advisory services amount to SAR 980,030 and submitted a copy of a selected sample valued at SAR 564,227 and by studying the attached documents, it shows the validity of what the appellant paid that the amounts of SAR 564,227 paid to analyzed suppliers and are not subject to withholding tax and the fact that the documents submitted ended the documentary dispute, which means accepting the deduction of SAR 564,227 from SAR 980,030 contained in the Authority's assessment, which means that the Circuit has to partially accept the Appellant's appeal and amend the decision of the Adjudication Circuit regarding the clause (withholding tax on technical and advisory services for the year 2015AD).

Whereas, regarding the Taxpayer's appeal regarding the clause (Telecommunications withholding tax for the year 2015AD), and based on paragraph No. (1) of Article (63) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425 AH and amended by Ministerial Decision No. (1/1748) dated 20/2/1427AH, on: "1- A non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to

the following rates: Royalty or royalty, payments for technical or consulting services or international telephone communication services paid to the head office or an associated company .15% ". paragraph (1) of Article 63 of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425AH and amended by Ministerial Decision No. (1/1748) dated 2/20/1427AH, stipulates that "1. A non-resident shall be subject to tax for any amount obtained from any source in the Kingdom, technical or consulting services or international telephone communication services other than what is paid to the head office or an associated company, rent, air tickets or air or sea freight, distributed profits, loan proceeds, insurance or reinsurance premium. 5%. Paragraph (3) of Article (57) stipulates: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the above, and where the appellant states that there are no amounts represented in telecommunications services and paid on behalf by ... Canada, the main center, and that the appellee imposed a withholding tax of (53,579) riyals at a rate of (15%), and by reference to the case file, and where the Plaintiff attached an Excel file, it is clear that the appellant stated that it subjected the amounts of international communications to 14,294 riyals according to the attached statement of withholding tax of 5% in the amount of 797 Saudi riyals. By studying the statement and the analytical statement, the appellant indicated attaching the supporting documents related to the amount of 328,285 Saudi riyals, which represents 95% of the total amount in dispute, and by studying the attached documents, it was found that there was an amount of 202,410 Saudi riyals paid to a local supplier (... company) It is not subject to withholding tax because it is paid to a resident company. As for the amount of 125,875 Saudi riyals, and where the appellant did not submit the correct invoice because it is registered with a date that does not match the statement contained in the case file, in addition to the difference in the amount shown in the invoice, and where this does not negate the fact that the service is provided by a non-resident supplier and is not subject to withholding tax, and with regard to the mismatch, and where it was found that the communication expense represents the support of technical services, which is considered a capital expense and covers more than one year, which makes it necessary to partially accept the Taxpayer's appeal and amend the decision of the Adjudication Circuit regarding the clause (Telecommunications withholding tax for the year 2015AD).

Whereas, regarding the Taxpayer's appeal regarding the clause (withholding tax on other payments for the year 2015AD), and based on paragraph No. (1) of Article (63) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425 AH and amended by Ministerial Decision No. (1/1748) dated 20/2/1427AH, on: "1- A non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates: Any other payments .15% ". Paragraph (3) of Article (57) stipulates: "In the event that



the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the above, and after reviewing the submissions and documents submitted by the two parties in the case file related to the year 2015AD, the withholding tax imposed on other services paid by the college ... on behalf of the College of (...) (Appellant) to the service providers, and where it is found that the appellant in this regard provided an analytical statement of all amounts subject to withholding tax and by reference to the details provided by the Taxpayer to the Authority, on which the Authority relied in assessment ing the withholding tax did not include that amount, as the Taxpayer requested the Authority to provide it with the basis for assessment ing it, and since the Authority, in its response memorandum to the Taxpayer's appeal, did not clarify the basis for assessment ing it to other payments to the amount in dispute, which requires accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (withholding tax on other payments for the year 2015AD).

Whereas, regarding the Taxpayer's appeal regarding the clause (withholding tax on insurance for the year 2015AD), and based on paragraph No. (1) of Article (63) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425 AH and amended by Ministerial Decision No. (1/1748) dated 20/2/1427AH, on: "1- A non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates: Technical or consultancy services, or international telephone services other than payments made to the head office or an affiliated company, rent, airline tickets or air or sea freight, distributed profits, loan interest, insurance or reinsurance premiums. 5%. Paragraph (3) of Article (57) stipulates: The burden of proving the accuracy of what is stated in the Taxpayer's return regarding revenues, expenses, and any other data lies with the Taxpayer. In case he is unable to prove the accuracy of what is stated in his returns, the Tax Authority may, in addition to applying any other statutory penalties, disallow the expense that is not proven accurate by the Taxpayer or make an estimated assessment according to the Tax Authority's view in light of the circumstances and facts related to the case and the information available to the Tax Authority." Based on the above, and upon reviewing the supplementary response memorandum attached dated 14/03/2024, it appears that the Authority submitted its response to the Taxpayer's appeal regarding the above clause, stating that upon reviewing the Taxpayer's appeal on the clause, it becomes clear after reviewing the statement submitted by the Taxpayer that the statement matches the amount that the Authority subjected to withholding tax. Upon reviewing the submitted documents, it became clear that documents were submitted for an amount of (220,865) riyals only, and upon reviewing them, it became clear that they were paid to local entities. Since the documents submitted by the Taxpayer prove the validity of deducting an amount of (220,865) riyals, and what is beyond that was not proven documentarily in the



amount of (18,682) riyals due to failure to submit supporting documents, based on paragraph (3) of Article (Fifty-Seven) of the Executive Regulations of the Income Tax Law, the Authority states that it is for the respected Circuit to decide what it deems appropriate according to what the Taxpayer has submitted as documents. Accordingly, and based on the above, the Circuit concludes by accepting the Taxpayer's appeal regarding the amount of (220,864) riyals for the Taxpayer's submission of supporting documents. As for the remaining amount valued at (18,682) riyals, and whereas the Taxpayer did not submit supporting documents for it, and whereas the dispute is a documentary dispute which necessitates imposing withholding tax on it with amending the rate to become (5%) instead of (15%) according to Article (63), it is therefore necessary to reject the Taxpayer's appeal for the amount of (18,682) riyals and amend the Adjudication Circuit's decision.

Whereas, regarding the Authority's appeal regarding the clause (withholding tax imposed on the interest of the loan), the clause (withholding tax imposed on air tickets), the clause (withholding tax imposed on marketing services), and the clause (withholding tax imposed on technical and advisory services), and whereas Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the case is filed, the substance of the case and the answer must be monitored before the agreement is recorded, provided that the origin of the case is within the jurisdiction of the Circuit, even if the substance of the agreement is within the jurisdiction of another court or Circuit, provided that the merits of the case or some of it is among those agreed upon." Based on the foregoing, and where it has been proven to this Circuit that the Authority's request to abandon the appeal in the above clauses is in accordance with what was stated in the letter issued by it in the attached memorandum, which includes " Secondly/With regard to the Authority's appeal against the decision of the Circuit in Clause No. (2) to amend the Authority's decision on the clause of withholding tax imposed on the loan interest, its point of view is as follows: - Third: With regard to the Authority's appeal against the Circuit's ruling in Clause No. (4) amending the Authority's decision on the withholding tax imposed on air tickets, its point of view is as follows: - Fourth/With regard to the Authority's appeal against the decision of the Circuit in Clause No. (5) to amend the Authority's decision regarding the withholding tax imposed on marketing services, its point of view is as follows: - Fifth/With regard to the Authority's appeal against the decision of the Circuit in Clause No. (7) to amend the Authority's decision regarding the clause of withholding tax imposed on technical and advisory services, its point of view is as follows: The Authority wishes to inform the respected Circuit of its abandonment of its appeal specifically regarding the above-mentioned clauses and any procedures that resulted from the Authority's appeal concerning this clause, in accordance with what the Adjudication Circuit's decision concluded in its reasoning. therefore, the Circuit shall accept the abandonment of the litigation.

Whereas, regarding the Authority's appeal concerning the clause (withholding tax on salaries for the year 2015 AD) and the clause (withholding tax on telecommunications for the year 2015 AD), and the Taxpayer's appeal regarding the clause (withholding tax imposed on loan interest) and the clause (basis for issuing the amended withholding assessment for the year 2015 AD), and whereas there is no fault with the Circuit in adopting the grounds of the decision under challenge without adding to them when it determined that those grounds are sufficient and do not require any new additions, because in upholding them with what those grounds contained, it is confirmed that it found nothing in the objections raised against the decision that merits a response beyond what those grounds already contained. Given this, and given that it is established that the decision under appeal regarding the dispute concerning the contested clauses was consistent with the valid grounds upon which it was based and which are sufficient to support its ruling, as the Circuit that issued it undertook to examine the core of the dispute and concluded with the result it reached in its operative part, and whereas this Circuit has not observed anything that requires correction or comment in light of the defenses presented before it, this Circuit hereby concludes by rejecting the Taxpayer's appeal and rejecting the Authority's appeal, and affirming the decision of the Adjudication Circuit under appeal in its conclusion, based on its stated grounds.

Whereas, regarding the appeal of the two parties regarding the clause (delay fine), and based on paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes delays in paying the tax required for withholding and accelerated payments, calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." Based on paragraph (1) of Article (68) of the executive regulations of the income tax law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which states the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law: "Unpaid tax means the difference between what the Taxpayer paid on the statutory date and the tax payable under the provisions of the Law. It includes the amendments made by the Authority and which have become final as stated in paragraph (2) of Article Seventy-one of these Regulations, including the objected cases where the fine is calculated from the date of the statutory date of submission of the declaration and payment." Based on the above, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since

the dispute between the two parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the statutory texts, which requires amending the decision of the Adjudication Circuit regarding the appeal of the parties on the (delay fine) clause.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

First: Acceptance of the appeal procedurally from the Taxpayer/ Company... Commercial registration (...), unique number (...) The appeal submitted by the Zakat, Tax and Customs Authority against the decision of the first circuit regarding violations and disputes of income tax in the city of Dammam with number (IZD-2022-2576) issued in case number (W-2021-42647) related to the tax assessment for the year 2015AD

Second: On the merits:

1-Regarding the parties' appeal on the clause (withholding tax on salaries for the year 2015 AD):

(A) Rejection of the Authority's appeal and endorsement of the decision of the Adjudication Circuit regarding the clause (withholding tax on salaries for the year 2015 AD).

(B) Accepting the appeal of the partially Taxpayer and amending the decision of the Adjudication Circuit regarding the clause (withholding tax on salaries for the year 2015 AD).

2- With regard to the parties' appeal on the clause (withholding tax imposed on the loan interest):

(A) Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (Withholding Tax on Loan Interest for the year 2016 AD).

(B) Accepting the abandonment of litigation regarding the Authority's appeal on the (withholding tax imposed on loan interest) clause.

3- With regard to the parties' appeal on the clause (withholding tax imposed on air tickets):

(A) Accepting the appeal of the Taxpayer and canceling the decision of the Adjudication Circuit regarding the clause (withholding tax imposed on travel tickets).

(b) Accepting the abandonment of litigation regarding the Authority's appeal on the (withholding tax imposed on travel tickets) clause.

4-Regarding the parties' appeal on the clause (withholding tax imposed on marketing services):

(A) Accepting the appeal of the partially Taxpayer and amending the decision of the Adjudication Circuit regarding the clause (withholding tax on maintenance and marketing services for the year 2015 AD).

(b) Accepting the abandonment of the litigation in connection with the Authority's appeal against the clause (withholding tax imposed on marketing services).



5-Regarding the parties' appeal on the clause (withholding tax imposed on technical and advisory services):

(A) Accepting the appeal of the partially Taxpayer and amending the decision of the Adjudication Circuit regarding the clause (withholding tax on technical and advisory services for the year 2015 AD).

(b) Accepting the abandonment of the litigation in connection with the Authority's appeal against the clause (withholding tax imposed on technical and advisory services).

6-Regarding the parties' appeal on the clause (Telecommunications Withholding Tax for the year 2015 AD):

(A) Accepting the appeal of the partially Taxpayer and amending the decision of the Adjudication Circuit regarding the clause (Telecommunications Withholding Tax for the year 2015 AD).

(b) Rejecting the Authority's appeal and endorsing the decision of the Adjudication Circuit regarding the clause (Telecommunications Withholding Tax for the year 2015 AD).

7- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (withholding tax on other payments for the year 2015AD).

8- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (Basis for issuing the amended withholding assessment for 2015AD).

9- With regard to the Taxpayer's appeal on the clause (withholding tax on insurance for the year 2015 AD):

(A) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding an amount of (220,864 riyals).

(B) Rejecting the Taxpayer's appeal and amending the decision of the Adjudication Circuit regarding an amount of (18,682 riyals).

10- Amending the decision of the Adjudication Circuit regarding the appeal of the two parties on the clause (delay fine).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024- 171149

Case No. I-2023-171149

### Keywords

Income Tax - Expenses Incurred to Generate Income - Travel Expenses for the Finished Fiscal Year -

Acceptance of Taxpayer Appeal

### Summary:

The Taxpayer's objection to the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2509), where its appeal against the clause (travel expenses for 2015) lies in the Authority's treatment of the non-approval of the deduction of travel expenses. Whereas, the Appeal Committee has established that it is legally permissible to deduct the expenses incurred by the Taxpayer if proven by supporting documents, and it is worth mentioning that the Authority did not provide evidence contradicting what the Taxpayer submitted and what it acknowledged. Consequently; accepting the Taxpayer's appeal and canceling the decision of the adjudication authority.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:

the appeal filed on 24/01/2023 AD, from/... National ID number (...) as an agent for the appellant company under agency No. (...), on the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Jeddah Governorate No. (IZJ-2022-2509) issued in Case No. (I-2021-66762) related to the 2015

AD tax assessment, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

- 1- Rejection of the Plaintiff's objection to the clause of not allowing the deduction of travel expenses.
- 2- Rejection of the Plaintiff's objection to the clause of not allowing the deduction of other allowances (salaries and wages).
- 3- Rejection of the Plaintiff's objection to the clause not to allow the deduction of gift expenses.
- 4- Accepting the Plaintiff's objection to the clause of the incorrect amount of tax allowed by the Authority in exchange for what is paid by the branch.
- 5- Rejection of the Plaintiff's objection to the delay fine clause.

Whereas this decision was not accepted by the Taxpayer (branch of the ... company), the Taxpayer submitted an appeal statement, which was reviewed by the Circuit, where its appeal lies with regard to the clause (travel expenses for the year 2015 AD), the Taxpayer explains that the Authority did not approve, during the assessment ing procedure, the travel expenses in the amount of (33,151,314) riyals for the year 2015 AD on the pretext of not submitting the supporting documents, where in reference to the adjudication decision, the Taxpayer submitted the Arabic translation of the agreement for the payment of expenses between the branches, through which it is noted that it is consistent with the policies of the company group in charge of incurring expenses on behalf of the assigned company and reloading them on an actual basis, in addition to an analysis of the expenses charged by the subsidiaries to prove the validity of the expenses. He also submitted a copy of the management invoices from the subsidiary in exchange for reloading. The Taxpayer states that the travel expenses were stated in its tax return for the year 2015 AD, which is supported by sufficient documents such as agreements and invoices, in addition to It is a widely known international group in the field of management consulting and implementation of operations in many countries, where the branch in charge of concluding contracts with various clients in the Kingdom of Saudi Arabia to provide services according to its licensed activities. Due to the nature of the specialized contracts, the assigned branch requests assistance from the offices of the ... company outside the Kingdom of Saudi Arabia to carry out services with a short duration in nature, and requires them to travel to various locations including the Kingdom of Saudi Arabia, and bear a facility ... that sells / buys services from facilities ... Other, including the branch located in Saudi Arabia, travel costs for these consultants from Monsha 'at ... Other, as these services are for the technical services provided. These costs are reimbursed on the basis of actual documents provided by visiting employees of affiliates or third parties on an actual basis. With this in mind, the branch bears the actual cost (or travel costs) of visiting consultants from offices outside the Kingdom of Saudi Arabia as this travel is necessary to provide technical and consulting services under the branch's contracts in the Kingdom of Saudi Arabia, as these expenses consist of various expenses such as the purchase of air tickets, accommodation, hotel expenses, taxi fares, meals, etc., as these expenses were

reimbursed at the cost price of the subsidiary in accordance with its agreement with the group companies, and this arrangement is in line with the group's transaction pricing policies. Accordingly, the cost incurred on customer engagements in Saudi Arabia consists of two elements: a) Time fees spent by employees of subsidiaries of Saudi projects (and represents a source of income for the Group) as the branch paid withholding tax of (15%) on income earned by subsidiaries (non-resident companies) as technical and advisory services. The branch also wishes to inform the Authority that the services provided during 2015 AD by non-resident subsidiaries amounted to SAR (191,757,262), and the branch deposited a withholding tax of SAR (28,763,589) on the above services by the subsidiaries. b) Services provided by third parties, such as airlines, travel agents, hotels, taxi companies... Etc. (representing a source of income for third parties), which are travel expenses and other expenses as mentioned above, as the branch of a ... company In Saudi Arabia part of an international organization, it collects its resources from subsidiaries when providing services to Saudi clients as required under branch contracts. Visiting consultants from various affiliates are required to arrange travel (e.g. visas, hotels, taxi fare, airline tickets.... Etc.) and the visiting staff shall recover those expenses from the concerned offices. Subsequently, the concerned offices recharge the cost of non-margin travel to the branch in the Kingdom of Saudi Arabia as these costs are related to the Saudi contracts of the branch in the Kingdom of Saudi Arabia. The Branch would also like to inform the Authority that there is no motive to make any income from these arrangements. The cost of travel is generally incurred as follows: (1) In respect of hotels/accommodation, taxis, meals...etc. are directly incurred / reimbursed by the Visiting Technical Advisors and mainly to resident Saudi suppliers and recovered by the Visiting Advisor from their parent office i.e. the companies associated with the Branch. These costs are charged to the office of ... in the Kingdom of Saudi Arabia by the associated offshore company under the original invoices. (2) With regard to travel tickets, they are purchased directly from the contracting travel agents, noting that in some cases the travel tickets are purchased by the visiting technical advisors and recovered from their home office. These costs are charged to the office of ... in the Kingdom of Saudi Arabia by the associated offshore company under the original invoices. The branch also confirms that these expenses are documentary and considered necessary for the activity and related to the achievement of the taxable income of the branch and must be approved as actual expenses that are entitled to be deducted under Article (12) of the Income Tax Law and Article (9) of the Executive Regulations of the Income Tax Law. The assigned branch also reports that it paid the withholding tax imposed on the above-mentioned travel expenses amounting to SAR (33,151,314) recharged to subsidiaries during 2015 AD. Accordingly, the branch requests, without prejudice to its views, against the Authority's treatment of not approving travel expenses, but it must allow the branch to adopt the deduction of the withholding tax paid on travel expenses in order to avoid double taxation. Accordingly, it demands the acceptance of its appeal and the reversal of the decision of the Adjudication Circuit in the clauses subject to its appeal.

on Wednesday, 28/02/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video conferencing in

accordance with the procedures for remote video litigation; based on the provisions of Clause 2 of Article 15 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441 AH; after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:



Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and with regard to the Taxpayer's appeal on the clause (travel expenses for the year 2015 AD), where the Taxpayer's appeal lies in addressing the Authority's failure to approve the deduction of travel expenses, and based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, which stipulated the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. (d) It is not of a capitalist nature.", and based on paragraph No. (3) of Article (57) of the Executive Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/6/1425 AH, which stipulates the following: "3- In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the foregoing, it becomes clear that the dispute between the parties lies in the Authority's refusal to deduct travel expenses due to the failure to provide supporting documents, while the Taxpayer argues that these expenses constitute travel expenses recharged from different company branches and subsequently paid to the head office in accordance with the concluded agreement. The Taxpayer also states that he paid withholding tax at a rate of (15%) on the amounts paid to the subsidiary company for the services provided, represented by the disputed clause, where he demands the deduction of the paid withholding tax from the due income tax. Based on the foregoing, such expenses are considered allowable for deduction if it is proven that they are actual expenses supported by documentary evidence. Since the dispute regarding this clause





is a documentary dispute, and upon reviewing the documents attached to the case file, it appears that the Taxpayer has attached (the certified Arabic translation of the expense payment agreement between branches, Annex No. 6), which shows through paragraph No. 2, which states: "When the company incurs any expenses for non-clients for the common benefit of more than one company, each beneficiary company is obligated to compensate that company in proportion to the benefit it derived..." The Taxpayer also submitted an analysis of expenses recharged by the subsidiary companies (Annex No. 7), in addition to copies of invoices issued by the subsidiary companies for the recharge of the full amount of travel expenses in dispute (Annex 8A), where samples No. (Q4-9), No. (Q2-11), and No. (Q1-9) mentioned in the Excel file (Annex 9) were taken and matched with the invoices issued by other parties to the subsidiary companies, which contained sufficient description of the service provided. It also shows the matching of subsidiary company balances with the invoices they issued to the Taxpayer through (Annex 8A). Based on the above, and since it is legally established that expenses incurred by the Taxpayer may be deducted when proven by documentary evidence as mentioned, and it is worth noting that the Authority did not present evidence contradicting what the Taxpayer presented and acknowledged, the Circuit decides to accept the Taxpayer's appeal regarding the deduction of travel expenses for the year in dispute.

As for the withholding tax paid on it, the Circuit confirms that the proper treatment is to deduct the withholding tax paid to the head office from the income tax due in the event that the same expense is subject to withholding and income tax taxes (in the event that the deduction of the expense is not allowed from the income tax return) in order to avoid double taxation, as the deduction of travel expenses (as mentioned above) contained in the income tax return has been accepted, so the Taxpayer is not entitled to deduct the withholding tax from the income tax due in order to avoid double deduction and in accordance with what was clarified in the aforementioned treatment, which ends with the Circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding this clause.

With regard to the Taxpayer's appeal on the clause (delay fine), and where Article (70) of the Law of Sharia Pleadings issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement occurs before the lawsuit is seized, it is necessary to monitor the content of the lawsuit and respond before the agreement is recorded, taking into account that the origin of the lawsuit is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or circuit, provided that the subject of the lawsuit or some of it is among the agreed upon," and based on the foregoing, and where it was proven that the dispute ended with the Authority's acceptance of the Plaintiff's requests according to the attached e-mail (Annex 17) sent by the Authority on 27/11/2022 AD, which includes: "You can benefit from the initiative of exemption from fines



and continue your case in the General Secretariat of Tax, Zakat and Customs Committees. Note that this procedure does not conflict with the existing lawsuit. " As a result, the Circuit concludes that dispute over this clause has been resolved.

With regard to the Taxpayer's appeal against the clause (other allowances (salaries and wages), and the clause (gift expenses), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement occurs before the lawsuit is seized, it is necessary to monitor the content of the lawsuit and respond before the agreement is recorded, taking into account that the origin of the lawsuit is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or circuit, provided that the subject of the lawsuit or some of it is among the agreed upon," and based on the above, and where it was proven that the dispute ended by the Taxpayer's acceptance of the Authority's procedure, in order to end its position on the aforementioned clauses in accordance with what is stated in its appeal regulation issued on 23/1/2023 AD, which includes: " The Branch would like to state with all respect that it does not agree with the decisions of the First Circuit of the Committee for the Resolution of the following Tax Violations and Disputes contained in its above-mentioned decision: Rejection of the Plaintiff's objection to the non-approval of the deduction of other allowances (salaries and wages), Rejection of the Plaintiff's objection to the non-approval of the deduction of gift expenses. However, in order to terminate its position on the above clauses for the year, the Branch accepts the decisions of the First Circuit of the Tax Violations and Disputes Adjudication Committee "with protest" and reserves the right to appeal such remedies in the coming years." The matter with which the Circuit ends up proving the end of the dispute in these clauses.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Accepting the appeal procedurally of the Taxpayer's ... Commercial Registration No. (...), unique number (...), against the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2509) issued in Case No. (I -2021-66762) related to the tax assessment for the year 2015AD.

2- On the merits:

(A) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (travel expenses for the year 2015 AD).



- (b) Proof of the end of the dispute regarding the Taxpayer's appeal against the (delay fine) clause.
- (c) Proof of the end of the dispute regarding the Taxpayer's appeal on the clause (other allowances (salaries and wages)).
- (d) Proof of the end of the dispute regarding the Taxpayer's appeal against the clause (gift expenses).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2023- 112709

Case No. Z-2022-112709

### Keywords

Income Tax - Expenses Incurred to Generate Income - Miscellaneous Expenses -Acceptance of the Authority's Appeal

### Summary:

The Zakat, Tax and Customs Authority objected to the decision of the First Circuit to adjudicate income tax violations and disputes in the Governor of Jeddah No. (IZJ-2022-223), where its appeal lies on the clause (delay fine) in that the delay fine was imposed on unpaid tax differences on the regular date, and the clause (other miscellaneous expenses), for example: (Special expenses...), expenses of miscellaneous advances, expenses of buying cars, expenses of villa purposes) are considered miscellaneous expenses that are not related to the activity, and the Taxpayer shall not properly charge these expenses within the expenses of the year. Whereas, it has been proven to the Appeal Committee that the Taxpayer submits an analytical statement of the miscellaneous expenses and shows to the Circuit what has been detailed by the Authority in its subsequent memorandum that some of the expenses described in the activity are not related to it, as these expenses are considered personal and do not represent the activity. Consequently, the authority's appeal is accepted, and the decision of the adjudication committee is canceled.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (1) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

## Facts:



"The appeal submitted on 28/03/2022AD, by the Zakat, Tax and Customs Authority, against the decision of the First Circuit for Adjudication of Income Tax Violations and Disputes in Jeddah Governorate numbered (IZJ-2022-223) issued in Case No. (Z-2020-18602) related to the tax assessment for the year 2018, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the Adjudication Circuit's decision ruled as follows:

- 1- Rejection of the Plaintiff's objection to the labor salaries clause.
- 2- Accepting the Plaintiff's objection to the non-deductible expenses clause.
- 3- Modify the Defendant's action on the miscellaneous expenses clause; according to the grounds for the decision.
- 4- Modify the Defendant's action on the clause of fines and ex gratia payments; according to the grounds for the decision.
- 5- Modify the Defendant's action on the delay fines clause; according to the conclusion of this decision.

as this decision was not accepted by the appellant (Zakat, Tax and Customs Authority), it filed a list of appeals, which included the following:

The Authority objects to the decision of the disputed Adjudication Circuit, and claims that with regard to the clause (other miscellaneous expenses), and explains that it has reimbursed these expenses as miscellaneous expenses that are not related to the activity, for example (special expenses...), miscellaneous advances expenses, expenses for buying cars, expenses for villa purposes), and that the person charged with charging these expenses is not entitled to charge these expenses within the expenses of the year, so the Authority adheres to the validity and regularity of its procedure. With regard to the clause (delay fine), the Authority clarifies that the delay fine has been imposed on the unpaid tax differences on the regular date, as these clauses from the Authority's point of view are correct and remain and their origin has not been forfeited. In any regular way, the Circuit has violated what the work has settled on, which is the conclusion of the Circuit in violation of the statutory requirement, which confirms with it the validity and safety of its procedure. The Authority also appeals on the clause (expenses not allowed to be deducted) and the clause (expenses supported by a document in the amount of 1,238,688 riyals). The Authority requests to overturn the decision of the Adjudication Circuit on the clauses subject to appeal for the above grounds.

on Wednesday, 13/12/2023 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via video conferencing in accordance with the procedures of remote video litigation; based on the provisions of clause no:(2) of Article Fifteen of the Rules of Work of the Committees for Adjudicating Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441 AH; after reviewing the appeal submitted by the parties to the case, and after examining the

contents of the case file, and where the circuit found nothing to require the presence of the parties to the appeal, the circuit decided that the case has become ready for adjudication and issuing a decision on its subject, so the circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request is accepted procedurally, as it was submitted by a person with standing, and within the statutory period prescribed for its conduct.

On the merits, and as for the Authority's appeal on the clause (other miscellaneous expenses), and where the Authority's appeal lies in that these expenses are, for example: (Special expenses..., expenses of miscellaneous advances, expenses of buying cars, expenses of villa purposes) are considered miscellaneous expenses that are not related to the activity, and therefore it is incorrect to charge the Taxpayer those expenses within the expenses of the year, and based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, which stipulates the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. (d) It is not of a capitalist nature.", and by reviewing what the Authority pays regarding other expenses that they are not related to the activity represented in personal expenses, and after studying the documents submitted at the dismissal stage, it becomes clear that the Taxpayer submits an analytical statement of the miscellaneous expenses, and where the Circuit finds what was detailed by the Authority in its subsequent memorandum that some of the expenses described are not related to the activity, as these expenses are considered personal and do not represent the activity, which leads the Circuit to accept the Authority's appeal and overturn the decision of the Circuit of Class on this clause.

Regarding the Authority's appeal on the clause (delay fine), and where the Authority's appeal lies in the fact that the delay fine was imposed on the unpaid tax differences on the regular date, as these clauses from the Authority's point of view are correct and remain and their origin has not been lost, in which way the Circuit violated what the work has settled on, which is the conclusion of the Circuit contrary to the statutory requirement, and based on paragraph (a) of Article (77) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one

percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: (b) Delay in the payment of the tax due under the Authority's assessment. " Since it is established that the fine is due from the date of the tax due until the date of payment, and since the date of the tax due is the date on which the Taxpayer knew or should have known about it, it is assumed that it knew about it from the date of its due date. Accordingly, it was decided by the Circuit that it is valid to impose fines on the clauses in respect of which the Authority's appeal was accepted from the date of the tax due by law, and to cancel the fines in the clauses in respect of which the Circuit rejected the Authority's appeal, as they are dropped by the forfeiture of their origin, which leads the Circuit to partially accept the Authority's appeal and amend the decision of the Adjudication Circuit regarding this clause.

Regarding the Authority's appeal on the clause (undiscountable expenses), and the clause (documentary-supported expenses in the amount of 1,238,688 riyals), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement occurs before the lawsuit is seized, it is necessary to monitor the content of the lawsuit and respond before the agreement is recorded, taking into account that the origin of the lawsuit is within the jurisdiction of the circuit, even if the content of the agreement is within the jurisdiction of another court or circuit, provided that the subject matter of the lawsuit or some of it is among the agreed upon," and based on the foregoing, and where it has been proven to this circuit the request of the Authority to leave the appeal according to what was stated in the letter issued by it in the appendix memorandum, which includes " First/ with regard to the Authority's appeal on the clause of expenses that are not permissible to be deducted: "In the event that the Circuit overrides the procedural aspect, the Authority would like to inform the Honorable Circuit that its appeal in relation to the above-mentioned clause in particular, and the consequences of the Authority's appeal in relation to this clause, has been dismissed by the Circuit in accordance with the reasoning of the decision of the Adjudication Circuit." Second: Regarding the Authority's appeal against the miscellaneous expenses clause: The esteemed circuit authority, after reviewing the documents submitted by the Taxpayer, which are represented in a detailed statement containing miscellaneous expenses, but it did not clarify their nature, in addition to the presence of personal expenses that are not related to the activity, a sample of which is attached: ..., the Taxpayer also submitted a sample of invoices according to the following detail: ..., Based on the above, and where it became clear to the Authority that there are personal expenses that are not related to the activity on it, the



Authority informs of the acceptance of the documentary expenses related to the activity only as indicated above in the amount of (1,238,688) riyals, and the Authority adheres to its appeal otherwise, "which requires the Circuit to accept the abandonment of the litigation. On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

- 1-Accepting the abandonment of the litigation in connection with the Authority's appeal on an clause (undiscountable expenses).
- 2-Regarding the Authority's appeal on clause (miscellaneous expenses):
  - (A) Acceptance of the abandonment of the litigation in connection with the Authority's appeal on the clause (Documentary-supported expenses in the amount of 1,238,688 riyals).
  - (b)Accepting the appeal and canceling the decision of the adjudication Circuit in relation to clause (other miscellaneous expenses).
- 3- Accepting the Authority's appeal in part and amending the decision of the Adjudication Circuit with regard to the (delay fine) clause.





Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024- 194470

Case No. I-2023-194470

### Keywords

Income Tax - Expenses Incurred to Generate Income - Rent Expenses - Acceptance of Taxpayer Appeal

### Summary:

The Taxpayer's objection to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2023-95300), where its appeal lies on the clause (rental expenses), as it claims that they appeared in the trial balance for the fiscal year ended, and all of them are rental expenses related to the branch's activity. These expenses appeared in the financial statements and in the trial balance. The Authority requested a sample of these expenses within the additional data it requested from him, which the branch provided to the Authority. The Authority refunded the amount of (the difference between the total balance of the expense as shown in the lists and the amount of the sample required by the Authority), despite its ability to prove the amount. Based on the above, it does not agree to assessment the Authority to this clause, and the clause (consultancy fees expenses) on the basis of submitting supporting documents and attaching the analytical statement of those expenses and the available supporting documents. Whereas, it was proven to the Appeal Committee that these expenses are considered a deduction award if it is proven that they are actual expenses and supported by supporting documents, and by reviewing the case file, it was found that the Taxpayer submitted within its appeal list an analytical statement of the total rental expenses and submitted the supporting samples for payment to several real estate companies, and where the Authority did not address in its response memorandum the documents submitted in the appeal file. This means; accepting the Taxpayer's appeal and canceling the decision of the adjudicating circuit.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (70) of [The Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)
- Article (77) of [The Income Tax Law issued by Royal Decree No. \(M/1\) dated 15/01/1425AH.](#)

- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:



The submitted appeal was heard on: 04/05/2023 AD, from/ branch of a company..., Commercial Register (...), on the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2023-95300) issued in Case No. (I-2022-95300) related to the tax assessment for the year 2016, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

First: Proof of the end of the dispute of the Plaintiff/ branch of a ... company (unique number...) With the Defendant/Zakat, Tax and Customs Authority, related to the clause of salaries and wages related to an amount of (55,934,230) fifty-five million nine hundred and thirty-four thousand two hundred and thirty riyals, by the Defendant's acceptance of the Plaintiff's requests in this regard.

Secondly: Proof of the end of the dispute of the Plaintiff/ branch of a ... company (unique number...) With the Defendant/Zakat, Tax and Customs Authority, related to the clause of seized amounts in the subject of the lawsuit, by the Defendant's acceptance of the Plaintiff's requests in this regard.

Third: modification of the Defendant/Zakat, Tax and Customs Authority's action against the Plaintiff/...Company. (...) related to the delay fine clause in question, as explained in the grounds.

Fourth: Rejection of the other objections of the Plaintiff/ branch of a ... company (unique number...) on the decision of the Defendant/Zakat, Tax and Customs Authority regarding the assessment at issue.

since this decision was not accepted by the Taxpayer (Company...), it filed a list of appeals, which included the following summary:

The Taxpayer objects to the decision of the Adjudication Circuit in question, it claims that with regard to the clause (salaries and wages), the Taxpayer claims to cancel the circuit's decision on this clause on the basis that its rejection of its objection without giving objective grounds, except that the salaries and wages mentioned in the tax return differ from the salaries in the financial statements. It was not taken into account that the tax return was reclassified where the net income matches between the financial statements and the tax return, and confirms that the salaries and wages were recorded in the books and supported by documents and data and were confirmed by an approved audit office in the Kingdom. Regarding the clause (rental expenses), the Taxpayer requests cancellation of the Circuit's decision concerning this clause, on the basis that rental expenses appeared in the trial balance for the fiscal year ending 31/12/2016 AD in the amount of (9,618,625) riyals, all of which are rental expenses related to the branch's activity and these expenses appeared in the financial statements and in the trial balance under account number (630910). The Authority requested a sample of those expenses in the amount of (1,066,270) riyals within the

additional data it requested from him, which the branch provided to the Authority. The Authority rejected an amount of (8,611,650) riyals (the difference between the total expense balance as shown in the statements and the sample amount requested by the Authority), despite his ability to prove the amount. Based on the above, he does not agree with the Authority's assessment on this clause and requests to review the detailed statement showing all rental payments and concluded contracts supported by proof of payment of the amounts shown totaling (16,588,468) riyals. As is known, rental expense is linked to the contract period, and accordingly he calculated what pertains to the year 2016 AD from the total amount paid, which amounts to (9,618,625) riyals. With regard to the clause (Consultancy fees expenses), the Taxpayer requests to cancel the circuit's decision on this clause, on the basis of submitting the supporting documents and attaching the analytical statement related to those expenses and the available supporting documents amounting to (5,049,947) riyals. With regard to the clause (the cost of subcontractors), the Taxpayer claims to cancel the decision of the Circuit on this clause, provided that the value of the cost of subcontractors according to the accounts and the trial balance amounted to (17,949,371) riyals and amounted to (20,899,775) riyals in the tax return. The difference was in the amount of (2,950,404) riyals, and it relates to projects inside the Kingdom and is implemented by subcontractors on its behalf, and it is implemented by local and non-local entities that complete these projects implemented with the government, in addition to their cost. The Authority refunded them to the tax base and considered them undiscountable expenses, despite the fact that the net income declared in the tax return corresponds to the net income declared in the financial statements. With regard to the clause (delay fine), the Taxpayer requests to cancel the decision of the Circuit on this clause on the basis that the additional tax obligations have arisen due to some amendments made by the Authority and not as a result of its failure to pay the amount of tax due on the due date of the tax return.

On Sunday, 04/08/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members, whose names are recorded in the minutes, through video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No. (25711) dated: 08 /04 /1445 AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

#### Grounds:

Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible

because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and as for the Taxpayer's appeal regarding the clause (salaries and wages), and based on Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH, it is: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement occurs before the lawsuit is seized, it is necessary to monitor the content of the lawsuit and respond before the agreement is recorded, taking into account that the origin of the lawsuit is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of a court or another Circuit, provided that the subject of the lawsuit or some of it is among the agreed upon," and based on the foregoing, and where the Taxpayer's appeal is on an amount of (17,188,490) riyals, and where the decision of the Circuit to end the dispute on an amount of (55,934,230) riyals, which was accepted by the Authority, and the rejection of the difference contained between the wages and salaries loaded with the tax return and a certificate from the legal accountant of (4,094,895) riyals, and where the Taxpayer submitted its response with its desire to remove any ambiguity regarding this clause, as it was clearly indicated that the Authority's last action was accepted, which the Circuit ends up to prove the end of the dispute regarding the Taxpayer's appeal on the clause (salaries and wages). Whereas, regarding the Taxpayer's appeal regarding the clause (amounts seized from external suppliers) and based on Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH, it is: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement occurs before the lawsuit is seized, it is necessary to monitor the content of the lawsuit and respond before the agreement is recorded, taking into account that the original lawsuit is within the jurisdiction of the circuit, even if the content of the agreement is within the jurisdiction of another court or circuit, provided that the subject of the lawsuit or some of it is among the agreed upon." Based on the foregoing, the Taxpayer referred to the decision of the Adjudication Circuit to prove the end of the dispute regarding the refund of seized amounts from suppliers in the amount of (6,790,245) riyals, by accepting the Taxpayer to the procedure of the authority, and since the Taxpayer only referred to the clause in its appeal list, and commented in its response by referring to the decision of the Adjudication Circuit to the end of the dispute, with which the circuit ends up dismissing the appeal of the Taxpayer on the clause (amounts seized from external suppliers).

Whereas, with regard to the Taxpayer's appeal regarding the clause (rental expenses), and where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit regarding this clause, it claims that the rental expenses appeared in the trial balance for the fiscal year ending on 31/12/2016 AD in the amount of (9,618,625) riyals, all of which are rental expenses related to the branch's activity. These expenses appeared in the financial statements and in the trial balance in account No. (630910), and the Authority requested a sample of these expenses in the amount of (1,066,270) riyals within the additional data it requested from him, which the branch provided to the Authority. The Authority refunded an amount of (8,611,650) riyals (the difference between the total balance of the expense as shown in the lists and the amount of the sample required by the Authority), despite its ability to prove the amount and based on the foregoing, it does not agree to assessment the Authority in this clause. Based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, which stipulates the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. D - Not to be of a capital nature ", and based on the foregoing, as these expenses are considered a deduction award if it is proven that it is an actual expense and supported by supporting documents, and by informing the Circuit of the case file, it was found that the Taxpayer submitted within its appeal list an analytical statement of the total rental expenses and submitted the supporting samples for payment to several real estate companies, and where the Authority did not address in its response memorandum to the documents submitted in the appeal file, which ends with the Circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (rental expenses).

Whereas, with regard to the Taxpayer's appeal regarding the clause (consulting fees expenses), and where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit regarding this clause; on the basis of submitting the supporting documents and attaching the analytical statement related to those expenses and the available supporting documents amounting to (5,049,947) riyals. Based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, which stipulates the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. D- Not to be of a capital nature ", and based on the foregoing, as these expenses are considered a deduction award if it is proven that it is an actual expense and supported by supporting documents, and by informing the Circuit of the case file, it was found that the Taxpayer submitted within its appeal list an analytical statement of the

total expenses of consulting fees in the amount of (5,049,947) riyals, and it attached the supporting samples to be paid in the e-mail, and where the Authority did not address in its response memorandum to the documents submitted in the appeal file, which ends with the Circuit partially accepting the Taxpayer's appeal and amending the decision of the Adjudication Circuit regarding the clause (consulting fees expenses), by deducting the amounts for which the taxp submitted evidence supporting its disbursement.

Whereas, with regard to the Taxpayer's appeal on the clause (the cost of subcontractors), the Taxpayer requests to cancel the decision of the Circuit on this clause, provided that the value of the cost of subcontractors according to the accounts and the trial balance amounted to (17,949,371) riyals and amounted in the tax return to (20,899,775) riyals and the difference was (2,950,404) riyals, which belong to projects within the Kingdom and are implemented by subcontractors on its behalf, and are implemented by local and non-local entities that complete these projects implemented with the government, in addition to their cost, the expenses and the transfer price difference, as the Authority refunded them to the tax base and considered them undiscountable expenses, despite the fact that the net income declared in the tax return corresponds to the net income declared in the financial statements. Based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, which stipulates the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income.

c. It must be related to the tax year. D - Not to be of a capital nature ", and based on the foregoing, as these expenses are considered a deduction award if it is proven that it is an actual expense and supported by supporting documents, and by informing the Circuit of the case file, it was found that the Taxpayer submitted within its appeal list an analytical statement with a total of (2,950,404.66) riyals and it submitted the supporting samples to pay them, and where the Authority did not address in its response memorandum to the documents submitted in the appeal file, which ends with the Circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (the cost of subcontractors).

Whereas, with regard to the Taxpayer's appeal on the clause (delay fine), the Taxpayer claims to cancel the decision of the Circuit on this clause on the basis that the additional tax obligations have arisen due to some amendments made by the Authority and not as a result of its failure to pay the amount of tax due on the due date of the tax return. Based on paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which states: "In addition to the fines mentioned in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay, and this includes the delay in the payment of the tax required to be withheld and the accelerated payments, calculated from the date the tax is due to the date of payment."

Based on the foregoing, it is clear from the statutory texts that the delay fine is imposed on the Taxpayer as a result of the delay in the payment of the tax due on him, and where the dispute ended in the clauses (salaries and wages) and (amounts reserved from external suppliers), and the acceptance of the Taxpayer's appeal in the clauses (rental expenses) and (the cost of subcontractors), and the amendment of the circuit's decision in the clause (consultancy fees), and therefore what is related to it takes its judgment, and accordingly the matter with which the circuit ends up accepting the Taxpayer's appeal in part by dropping the delay fine on the clauses in which the Taxpayer's appeal was accepted,

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

1- Acceptance of the appeal procedurally of the applicant/ branch of the ... company, commercial register (...), unique number (...), on the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2023-95300) issued in Case No. (I-95300-2022) related to the tax assessment for the year 2016AD.

2- On the merits:

- (a) Proof of the end of the dispute regarding the Taxpayer's appeal on the clause ( salaries and wages).
- (b) Disregarding the Taxpayer's appeal against the clause (amounts seized from external suppliers).
- (c) Accepting the appeal of the Taxpayer and canceling the decision of the Adjudication Circuit regarding the clause (rental expenses).
- (d) Accepting the appeal of the partially Taxpayer and amending the decision of the Adjudication Circuit regarding the clause (consulting fees expenses).
- (e) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause ( cost of subcontractors).
- (F) accepting the Taxpayer's appeal in part and amending the decision of the Adjudication Circuit with regard to the delay fine clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024- 173730

Case No. I-2023-173730

### Keywords

Income Tax - Expenses Incurred to Generate Income - Non-Activity Expenses - Acceptance of Taxpayer Appeal

### Summary:

The Taxpayer's objection to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2584), where its appeal against the clause (expenses not related to the activity) lies in the failure to submit the agreement between the branch of the Kingdom of Saudi Arabia and the main branch containing the obligations of the parties. Whereas, it has been proven to the Appeal Committee that the dispute is documentary and where the Taxpayer has submitted proof of the validity of its defenses, which shows that the expenses in dispute are actual expenses and related to the activity. This means; accepting the Taxpayer's appeal and canceling the decision of the adjudicating circuit.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (1) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:

The submitted appeal was heard on: 30/01/2023 AD of/... Residence number (...). In its capacity as an agent under the notarized foreign power of attorney No. (...) Issued by ... In its capacity as the Company's duly authorized representative of the Branch of the ... company Area in its capacity as the statutory representative, on the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in



the city of Dammam No. (IZD-2022-2584) issued in Case No. (I-2021-75537) related to the 2015 AD tax assessment, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

1. Reject the Plaintiff's objection regarding the clause of expenses not related to the activity.
2. Proof of the end of the dispute in relation to the social insurance teams clause.
3. Modify the Defendant's decision regarding the delay fine clause.

since this decision was not accepted by the Taxpayer (... Foundation), it filed a list of appeals, which included the following:

The Taxpayer objects to the decision of the Adjudication Circuit in question, it claims that with regard to the clause (expenses not related to the activity), as the appellant (the Taxpayer) demands the cancellation of the circuit's decision on this clause on the basis that the Taxpayer believes that the adjudication committee rejected the objection due to the lack of an agreement signed between the branch of the Kingdom of Saudi Arabia and the owner of the excavator, and only samples of documents that were submitted at the objection stage were submitted, and the Taxpayer states that it attaches the certified translation of the agreement signed between the branch of the Kingdom and the owner of the excavator, and also submits invoices and debit notes 100% issued by a third party and re-collected by the company "... (holding company)" on behalf of the owner of the excavator to the branch of the Kingdom, and based on the attached diagram and table informs the Taxpayer that the suppliers provide their services to the actual owner of the excavator (... company) And Saudia branch (branch of the company...— Free Zone, where the parties have agreed under the agreement concluded that the operating cost will be charged to the branch and the cost of the project will be charged to the owner of the platform ..., the supplier issued "the ... company (...)" Invoice addressed to the holding company "... company" On behalf of the actual owner of the Rig "Company..." In exchange for the transfer of the rig to the shipyard for maintenance and replacement of parts, the total invoice value amounted to \$4,599,452, equivalent to (17,247,945) riyals related to operating expenses, which were charged to the accounts of the Saudi branch. As for miscellaneous expenses from other suppliers, invoices were issued to the Holding Company (Company...) On behalf of the Saudi branch (the supporting documents are attached), and therefore these expenses should be allowed to be deducted based on Article (12) of the Tax Law, and Article (9) Paragraph (1) of the Executive Regulations of the Income Tax Law. While it was stated in the Defendant's response (the Authority) that after reviewing the documents submitted by the Plaintiff, it became clear that the invoices are not in the name of the company and therefore those expenses were amended, and based on the foregoing, the Authority adheres to the validity and integrity of its procedure based on what is stipulated in paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law and the provisions of paragraph (3) of Article (57) of the same Regulations, and from this point of view, whenever the decision issued by the Authority is in accordance with the statutory texts and

within the limits of the authority and powers delegated to it by law, and based on the information and documents available to it, its decision is valid and consistent with the relevant statutory texts; therefore, we request Your Excellency to reject the Plaintiff's appeal. With regard to the clause (delay fine), as the appellant (the Taxpayer) demands the cancellation of the decision of the Circuit on this clause on the basis that the delay fines result from technical differences between the branch and the Authority, and if due, they are due from the date on which the assessment becomes final, and the Taxpayer is based on Article (77/a) of the Tax Law and Article (68/a) of the Executive Regulations of the Income Tax Law. While it was stated in the response of the Defendant (the Authority) that it imposed a delay penalty on unpaid tax differences not settled within the statutory deadline based on paragraph (a) of Article (77) of the Income Tax Law, as well as based on paragraph (1/b) of Article (68) of the Executive Regulations of the Income Tax Law. The Authority's procedure is also supported by Appellate Decision No. (1774) for the year 1438 AH and Appellate Decision No. (1913) for the year 1439 AH, as well as Appellate Decision No. (1925) for the year 1439 AH. The Authority's procedure is also supported by the final judgment issued in Case No. (5245/1/Q) for the year 1438 AH issued by the Nineteenth Administrative Circuit at the Administrative Court in Riyadh and upheld by the Second Administrative Circuit at the Administrative Court of Appeal in Riyadh with judgment (3404/Q) for the year 1439 AH. The jurisprudence of the First Appellate Circuit for Adjudication of Income Tax Violations and Disputes has consistently upheld the Authority according to Appellate Decision No. (IR-2020-28) in Case No. (ZIW- 2018- 1657). It is therefore established and known to all Taxpayers according to the jurisprudence of the appellate committees that delay penalties are imposed according to what the statutory provisions clearly and explicitly stipulated. Therefore, the Authority maintains the correctness and validity of its procedure in accordance with statutory requirements.

On Tuesday, 16/04/2024AD, the First Appellate Circuit for Income Tax Violations and Disputes met via videoconferencing in accordance with the procedures for remote videoconferencing; based on the provisions of Clause No. (2) of Article Fifteen of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit did not find it necessary for the parties to the appeal to be present, the Circuit decided to close the pleadings and reserve the case for adjudication.

#### Grounds:

Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and as for the Taxpayer's appeal regarding the clause (expenses not related to the activity), and based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, which stipulates the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. (d) It is not of a capital nature". Based on the above, and since the focus of the dispute lies in the failure of the Taxpayer to submit the agreement between the branch of the Kingdom of Saudi Arabia and the main branch containing the obligations of the parties, and by reference to the case file, it becomes clear that the Taxpayer submits the agreement signed between the branch of the Kingdom of Saudi Arabia and the main branch, through which it becomes clear that the main branch charges the operating costs to the branch of the Kingdom of Saudi Arabia. Therefore, the expenses referred to are considered expenses related to the activity, and since the dispute is documentary and where the Taxpayer submitted proof of the validity of its defenses, which shows that the expenses in dispute are actual expenses related to the activity, which must accept the Taxpayer's appeal and cancel the circuit's decision in this clause.

Whereas, regarding the Taxpayer's appeal regarding the clause (delay fine), and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes delays in paying the tax required for withholding and accelerated payments, calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment", and based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law, which stipulates that "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these regulations, including cases that are contested, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on the above, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the law and the amendments made by the Authority, which must cancel the decision of the Circuit to impose the delay fine from the due date on the clause in which the Taxpayer's appeal was accepted.



On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

1- Accepting the appeal procedurally of the Taxpayer's ... commercial Register (...), unique number (...), against the decision of the First Circuit for the Resolution of Income Tax Violations and Disputes in Dammam City (IZD-2022-2584) issued in Case No. (I-2021-75537) related to the tax assessment for 2015AD

2- On the merits:

(a) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding an clause (expenses not related to the activity).

(b) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the (delay fine) clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-179140

Case No. W-2023-179140

### Keywords

Income Tax - Expenses Incurred to Generate Income - Expenses Not Documentarily Supported -  
Acceptance of the Authority's Appeal

### Summary:

The Taxpayer of the Zakat, Tax and Customs Authority objected to the decision of the Second Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ISR-2022-1981), where its appeal lies on the clause (expenses are not supported documentarily for the years 2016 AD and 2017 AD). Whereas, it has been proven to the Appeal Committee that these expenses are considered to be deductible if it is proven that they are actual expenses and supported by supporting documents, and since the dispute over this clause is a documentary dispute and by reviewing the case file, it becomes clear that the Taxpayer did not object to the addition of expenses that are not supported by documents, as the Authority's action initially did not amend the year 2016 AD and 2017 AD. The implication of this; acceptance of the authority's appeal and cancellation of the decision of the adjudicating circuit.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:

The appeal submitted on 19/02/2023AD by the Zakat, Tax and Customs Authority against the decision of the Second Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ISR-2022-

1981) issued in Case No. (I-2021-45368) related to the tax assessment for the years from 2015AD to 2017AD was considered in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

First: accepting the lawsuit filed by the Plaintiff / ....., Commercial Registration No. (....), against the Defendant / Zakat, Tax and Customs Authority, procedurally.

Secondly: On the merits:

1- Rejection of a lawsuit regarding the depreciation differences clause for the years from 2015AD to 2017AD.

2- Rejection of a lawsuit regarding a salary clause for related parties for the years from 2015AD to 2017AD.

3- Rejection of a lawsuit regarding a clause of fines and penalties for the years from 2015AD to 2017AD.

4- Rejection of a lawsuit in relation to another appropriations clause for the years from 2016AD to 2017AD.

5- Cancellation of the Defendant's action with regard to the expenses clause is not supported by a document for the years 2016AD to 2017AD, according to the grounds.

6- Proof of the end of the dispute regarding the capital gains clause for the year 2015AD.

7- Rejection of a lawsuit regarding the clause of retained earnings for the years from 2016AD to 2017AD.

as this decision was not accepted by the appellant (Zakat, Tax and Customs Authority), it filed a list of appeals, which included the following:

The Authority objects to the decision of the Appealed Adjudication Circuit, it claims that with regard to the clause (expenses are not supported documentarily for the years 2016AD and 2017AD), as the Appellant (the Authority) demands the annulment of the Circuit's decision on this clause on the basis of the year 2016AD : The Authority informs that the circuit issuing the decision subject to appeal has canceled that clause for that year, and accordingly the Authority has reviewed the grounds of the circuit, which were found to be related to the year 2018AD, which issued a decision of the same Circuit No. (ISR-2022-1982) in case No. (I-2021- 45372) (attached decision), and accordingly it is not possible to object or appeal against a decision whose grounds are unclear. Accordingly, the Authority requests to return that clause to the circuit issuing the decision to remove that deficiency in the decision and so that the Authority can see the decision and determine the extent of the appeal or not. In addition, the Circuit's grounds stated that the Authority has partially accepted the clause in the amount of (786,290) riyals, and the Authority responds that the conclusion of the circuit in that partial acceptance is incorrect and incorrect, as the Authority did not accept any amounts for that clause for that year and with regard to the year 2017AD : The Authority informs your Circuit that the Taxpayer did not object to that clause or even file a grievance with the Secretariat for the year 2017AD, but its objection was limited to the years 2016 ADand 2018AD as explained in the response memorandum clarifying the tax differences. Accordingly, it is clear that the Circuit canceled that clause for

that year without any justification or even a request from the appellant against him, the Authority is required to cancel that decision according to the grounds mentioned above , while the response of the appellant against him (the Taxpayer) stated that in 2016AD : The Authority added an amount of 1,652,100 riyals to the Zakat base as unsupported expenses. The fact is that these amounts were extracted by the Authority from the special trial balance in the Foundation for the year 2016AD during the examination phase, which is an intermediate account and its balance (zero ) at the end and beginning of the year and has no impact on the income statement or on the calculation of income tax. Rather, it is an account used by the Foundation to record some accounting operations and redirect it to the basic account for the purposes of accounting control and in 2018 : The Authority refunded amounts of 232,828 riyals of expenses, considering the absence of supporting documents, as the Authority was provided with all the documents, which are represented by the following : Operating materials in the Prince Sultan Military City parking project with a value of 61,811 riyals, which are 1- Expenses for the rental of equipment and machinery (attached in its reinforced invoices No. 2 ) , 2- Operating salaries in the Ibis Hotel project and Daggio Air Conditioning with a value of 40,837 riyals, which are salaries and wages of workers hired from an institution ... Related to a project ... Adaptation ( attached in its reinforced invoices No. 1 ). 3- Fire materials in Prince Sultan Military City Waqif project with a value of 130,176 riyals are materials that are used in the fire extinguishing system in the project (attached in its reinforced invoices No. 3).

on Sunday, 28/04/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via video conferencing in accordance with the procedures of remote video litigation; based on the provisions of clause no:(2) of Article Fifteen of the Rules of Work of the Committees for Adjudicating Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441 AH; after reviewing the appeal submitted by the parties to the case, and after examining the contents of the case file, and where the circuit found nothing to require the presence of the parties to the appeal, the circuit decided that the case has become ready for adjudication and issuing a decision on its subject, so the circuit decided to close the pleadings and reserve the case for adjudication.

#### Grounds:

upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request is accepted procedurally, as it was submitted by a person with standing, and within the statutory period prescribed for its conduct.

On the merits, and as for the Authority's appeal on the clause (expenses are not supported documentarily for the years 2016AD and 2017AD), and based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH,

which stated the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. (d) It is not of a capitalist nature.", and based on paragraph No. (3) of Article (57) of the Executive Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/6/1425 AH, which stipulates the following: "3- In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the foregoing, and since these expenses are considered a deduction award if it is proven that it is an actual expense and supported by supporting documents, and since the dispute over this clause is a documentary dispute and by reviewing the case file, it becomes clear with regard to the year 2016 that the Taxpayer did not object to the addition of expenses that are not supported by documentary evidence, as the Authority's action initially did not amend the year 2016, which ends with accepting the Authority's appeal to cancel the decision of the adjudication committee, and amend what was stated in its decision. As for the year 2017AD, and with reference to the appealed decision, it is clear that the committee mentioned the amounts for the year 2018AD amounting to (232,828) riyals, and for what was previously mentioned in the decision No. (ISR-2022-1982) related to the case No. (I-2021- 45372), which must accept the Authority's appeal to cancel the adjudication decision with regard to the clause of expenses that are not supported by a document for the year 2018AD in the amount of (232,828) riyals for the previous decision, and with regard to what was stated in the Authority's appeal regulation regarding its partial acceptance of the amount (786.290) riyals, and by referring to the case file and its content of documents showing that this partial acceptance is in accordance with the documents submitted in relation to the year 2018AD, which the Committee's decision in this regard must be canceled, and the contents of its decision amended.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Accepting the appeal procedurally from the appellant/Zakat, Tax and Customs Authority, against the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh City No. (ISR-2022-1981) issued in Case No. (I-2021-45368) regarding the tax assessment for the years 2015AD to 2017AD.

2- On the merits:





Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause (expenses are not supported by documents for the years 2016AD and 2017AD).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024- 192486

Case No. I-2023-192486

### Keywords

Income Tax - Expenses Incurred to Generate Income -Provision for Low Credit Losses - Acceptance of Taxpayer Appeal

### Summary:

The Taxpayer's objection to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2023-89967), where its appeal lies on the clause (provision for low credit losses for 2016 AD) as it claims to provide supporting documents. Whereas, it was proven to the Appeal Committee that the Taxpayer submitted a certificate from the Saudi Central Bank stating that the bank does not object to determining the value of the provision for doubtful debts for 2016 AD without any liability. This means; accepting the Taxpayer's appeal and canceling the decision of the adjudicating circuit.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (15) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:

The appeal submitted on 19/04/2023 AD by/..., in its capacity as an agent of the appellant company under the power of attorney issued by Berlin and approved by the official authorities in the Kingdom of Saudi Arabia, and the appeal submitted by the Zakat, Tax and Customs Authority on 26/04/2023 AD, against the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2023-89967) issued in Case No. (I-2022-89967) related to the tax assessment for the years 2016 and 2017, was considered in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

- 1- Rejection of the Plaintiff's objection related to the provision for low credit losses for 2016
- 2- Cancel the Defendant's decision related to the non-resolution of the losses carried forward for 2016 AD and 2017 AD.
- 3- Cancel the Defendant's decision related to the clause of subjecting the profits of investments to the net income of the associate company... For the years 2016 AD and 2017 AD.
- 4- Amending the Defendant's decision related to the delay fine clause.

since this decision was not accepted by the parties, each of them filed a list of appeals, which included the following:

Regarding the Taxpayer's appeal against the Resolution Committee's decision, the appeal concerns the clause of (provision for credit loss impairment for the year 2016 AD). The Taxpayer claims that the branch has already applied to the Saudi Central Bank (SAMA) to request certification and validation of the credit losses for the year 2016 AD. In return, the Saudi Central Bank requested the branch to provide a certificate from the certified public accountant in this regard. As your honorable committee is aware, issuing the certificate may take a long time, due to the certified public accountant's need to follow all necessary procedures in this regard. Therefore, the branch should not be penalized for a procedure beyond its control and outside its will. To confirm the branch's position, the branch has attached to the Resolution Committee and the Authority a copy of the correspondence that took place between the branch and the Saudi Central Bank in its previous memoranda. It appears that the Authority and the Resolution Committee did not pay attention to this fact and did not grant the branch additional time to obtain that certificate. Consequently, they prejudiced the company's rights by overlooking the original and substantial defenses regarding the disputed clause, which resulted in depriving the branch of a degree of litigation. The branch also confirms that it wishes to preserve its right to object and appeal the assessment within the specified period according to the regulations, which is (30) days. This is the reason for submitting the objection and appeal without providing the Saudi Central Bank certificate, which it was unable to obtain during that period. As your honorable committee knows, the Saudi Central Bank's procedures and requesting such certificates takes a long time. Accordingly, the branch should not be penalized for a procedure beyond its control. The branch also wishes to attach to your honorable committee the certified public accountant's report that confirms the existence of credit losses for the year 2016 AD pending the issuance of the Saudi Central Bank certificate. The bank will provide you with the required certificate as soon as it is issued. Therefore, the branch requests your honorable committee to grant it additional time to obtain the certificate. Should your honorable committee wish to verify this, it can communicate directly with the Saudi Central Bank and obtain all necessary information to properly study the appeal. The branch also confirms to your honorable committee that the provision for credit loss impairment is considered ordinary and necessary expenses related to generating income for any bank, as these expenses were incurred solely for the purposes of conducting

commercial business in the Kingdom of Saudi Arabia. Therefore, they are considered expenses that the regulations permit to be deducted under the provisions of Article (12) of the Income Tax Law and paragraph (1) and the provisions of Article (9) paragraph (1) of the Executive Regulations of the Income Tax Law. In light of the above, it is clear to your excellencies that all ordinary and necessary expenses for generating taxable income incurred during the tax year are allowable deductible expenses when calculating the tax base, except for any expenses of a capital nature. It is worth noting that the disputed expenses are not considered non-deductible expenses under the provisions of Article (13) of the Income Tax Law. With regard to the Taxpayer's appeal on the clause (delay fine), the Taxpayer explains that the branch appeals against the decision of the adjudication committee to calculate the late payment fine as of the date of the notification of the assessment in relation to the clause of low credit losses. The Taxpayer clarifies to your esteemed committee that the late payment fines, if due, are due as of the date at which the assessment becomes final. Accordingly, the penalty of delay in payment will not start until after the completion of the objection process based on the appeal procedures specified in the executive regulations of the income tax law. Accordingly, the Taxpayer demands the reversal of the decision of the Adjudication Circuit in the clauses subject of the appeal for the above grounds. The Appellant did not accept the decision, so it filed a list of appeals, which was reviewed by the circuit and included a request to accept its appeal and overturn the decision of the Adjudication Circuit.

on Monday, dated: 24/06/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are written in the minutes, via video communication in accordance with the procedures of remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No: (25711) and dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

#### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and since it is with regard to the Taxpayer's appeal on the clause (provision for low credit losses for 2016 AD), and where the Taxpayer's appeal lies in objecting to the decision of the adjudication Circuit towards this clause, as it claims to provide supporting documents. Based on Article (15) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH related to expenses related to books and

records, which states: " Reserves and Provisions: It is not permissible to deduct any reserves or allocations other than allocations of doubtful debts in banks. The regulation shall specify the rules and controls for determining these allocations. "Based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "The expenses that may be deducted to determine the taxable income are: 5- Reserves and allocations formed during the following year: (a) Provision for debts doubtful of collection in banks, provided that the bank submits a certificate from the Saudi Arabian Monetary Agency that includes determining the amount of debts doubtful of collection, and debts collected from them during the year, which must be declared within the tax base in the year of collection. Based on the above, it is clear that the dispute over this clause is a documentary dispute, and by referring to the lawsuit file and the defenses and documents it contains, it is clear that the adjudication decision ended with the rejection of the objection because the Taxpayer did not submit the certificate of the Saudi Central Bank, and it is clear that the Taxpayer submitted a certificate from the Saudi Central Bank stating that the bank did not object to determining the value of the provision for doubtful debts for 2016 AD with a value of (3,549,000) riyals without the slightest responsibility, which ends with the Circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit on this clause.

Regarding the Taxpayer's appeal regarding the clause (delay fine), and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." (e) Delay in paying the tax required to be deducted, specified as ten days from the month following the month in which payment was made to the beneficiary, as stated in Article 68 of the Regulation, and the responsibility for paying it lies with the entity responsible for the deduction. Based on the foregoing, it is clear from the statutory texts that the delay fine was imposed on the Taxpayer as a result of the delay in paying the tax due on him, and since clause No. (1) in the Taxpayer's appeal regarding the provision for the reduction of credit losses for the year 2016 AD ended with the decision of the Circuit regarding it to accept the appeal, which results in the cancellation of the delay fine due to the loss of the tax asset, which ends with the Circuit accepting the Taxpayer's appeal and canceling the decision of the Classification Circuit and rejecting the Authority's appeal on this clause.



Regarding the Authority's appeal regarding the clause (losses carried forward for the years 2016 and 2017 AD), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the case is set, the content of the claim and the answer must be monitored before the agreement is recorded, taking into account that the origin of the case is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or Circuit, provided that the merits of the case or some of it is among those agreed upon." Based on the foregoing, and where it was proven to this Circuit the Authority's request to leave the appeal as stated in the letter it issued in the appended note, which includes the following: "The Authority informs the Honorable Circuit that it has left its appeal regarding the above-mentioned clause set out in the decision referred to, as well as the procedures resulting from the appeal of the Authority..." therefore, the Circuit shall accept the abandonment of the litigation.

with regard to the Authority and Taxpayer's appeal on the remaining clauses at issue in the case, the Circuit has no fault in adopting the grounds for the decision under appeal without adding to them, if it determines that these grounds make it unnecessary to introduce anything new, since in upholding the decision with the content of these grounds, it is clear that the Circuit did not find any objections to the decision that merit a response beyond what is contained in these grounds; whereas it is established that the decision under appeal regarding the dispute regarding the clauses under appeal was consistent with the valid grounds on which it was based and sufficient to carry its judgment since the issuing Circuit scrutinized the dispute and came to the conclusion it reached in its operative part, and since this Circuit did not notice any reason to appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject Authority and the Taxpayer's appeal and uphold the decision of the Adjudication Circuit with respect to the rest of the clauses in the case, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Acceptance of the appeal procedurally from the Taxpayer, a branch of a bank ..., a commercial register (...), a unique number (...) And the appeal submitted by the Zakat, Tax and Customs Authority, against the decision of the first circuit for adjudicating violations and disputes of income tax in Riyadh with number (IZD-2023-89967) issued in case number (I-2022-89967) related to the tax assessment for the years 2016 AD and 2017AD.

2- On the merits:



- (A) Accepting the abandonment of the litigation in relation to the Authority's appeal on the clause (losses carried forward for the years 2016 AD and 2017 AD).
- (b) Rejecting the Authority's appeal and endorsing the decision of the Adjudication Circuit regarding the clause (subjecting the profits of investments to the net income of the associate company... for the years 2016 AD and 2017 AD).
- (c) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (provision for low credit losses for the year 2016 AD).
- (d) Rejecting the Taxpayer's appeal regarding the clause (non-compliance with statutory procedures).
- (e) Accepting the Taxpayer's appeal, canceling the decision of the Adjudication Circuit, and rejecting the authority's appeal regarding the clause (delay fine).



committee for adjudicating tax violations and disputes  
The First Circuit for Income Tax Violations and Disputes  
In Jeddah Governorate

Decision No. IZJ -2023 - 204637

Case No. I-2023-204637

### Keywords

Income tax - Expenses Incurred to Generate Income -exclusion of fees incurred - rejection of the Taxpayer's objection

### Summary:

The Taxpayer objected to the tax assessment for 2017 AD, as it objected to the Defendant's action of not allowing the deduction of the fees incurred from the head office (...) The Netherlands and added it to the adjusted net profit/loss for 2017 AD. While the Defendant argued that it modified the profit by the estimated expenses paid to the head office as expenses that are not deductible from the tax base. Whereas the adjudication committee established that what the Taxpayer indicated about its reliance on the provisions of paragraph (3) of Article (7) related to business profits by allowing the deduction of expenses incurred for the purposes of the business of the permanent establishment from the double taxation agreements between the Government of the Kingdom of Saudi Arabia and the Government of the Netherlands, it became clear that the Taxpayer did not provide the basis for calculating those expenses to apply the provisions of the agreement. The implication of that; rejection of the Taxpayer's objection.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (10) of Article (10) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)



## Facts:



the facts of this case are that ... National ID number (...) In its capacity as the legal representative of the Plaintiff, a branch of a ... company (Commercial Register No ....), filed its objection to the tax assessment for the year 2017 AD issued by the Zakat, Tax and Customs Authority, where the Plaintiff objects to the Defendant's action of not allowing the deduction of the fees incurred from the head office ... The Netherlands with a total amount of (9,942,015) riyals and added to the adjusted net profit/loss for 2017 AD, where the Plaintiff stated that the objected amount is as follows: Supply of services for corporate support functions = (8,164,646) riyals, supply of IT services = (1,777,370) riyals, total= (9,942,015) riyals. The Plaintiff clarified that it does not agree with the Defendant's treatment by excluding the fees incurred from the head office based on the provisions of paragraph (10) of Article (10) of the Income Tax Law in addition to paragraph (3) of Article (7) of the Double Taxation Avoidance Agreement between the Kingdom of Saudi Arabia and the Netherlands. Accordingly, the Plaintiff clarified its view as follows: - It does not agree on the Defendant's treatment as a result of the implementation of the contract in the Kingdom of Saudi Arabia with both (the Ministry of Interior and the Civil Aviation Authority) for the purpose of designing, installing and implementing the passenger registration project in order to meet the current and future needs of the Ministry of Interior, and the General Authority of Civil Aviation in the Kingdom of Saudi Arabia (GACA) granted a group ... Holding the airport solutions line for the check-in and check-out of passengers and their luggage at airports throughout the Kingdom, and accordingly the branch incurred various expenses among the group companies, which include the fees of the head office ... (Netherlands). - That the fees charged by the head office... (Netherlands) represented by the legal, financing, IT, marketing, human resources and technical support costs incurred by the Group ... on a combined basis on behalf of all branches and their subsidiaries and is divided between those branches and companies on a pro rata basis according to their revenues, and the fees paid between the sister companies are cleared by calculating .... Headquarter - The purpose of this grouping is to achieve maximum efficiency and derive economies of scale, so as to achieve significant savings in the total cost for the mutual benefit of all branches...and its subsidiaries all over the world, and the group entities that have incurred more than their fair share of the total divided cost are entitled to a profit margin of 5% on the difference that will be re-imposed, and the separate IT services amounting to SAR (1,777,370) provided by the head office of ... KSA on a cost plus 5% basis on the difference to be reloaded as the IT service includes but is not limited to network solution design support and daily IT technical and operational support for clients. - that intercompany rates are set between the head office ...and... Saudi Arabia, based on the agreed transaction pricing mechanism as set out in the transaction pricing report and included in Attachment No. (4) in the case file, in addition to that, copies of the relevant invoices that have been invoiced by the head office have also been attached, upon which the Plaintiff claims to allow the deduction of those expenses incurred ... Saudi Arabia between related parties for being necessary expenses to generate taxable income and to meet the services required by the Ministry of Interior.

The Plaintiff added that it does not agree with the Authority's view contained in the amended assessment, referring through it to Article 7 (3) of the Double Taxation Avoidance Agreement between the Kingdom of Saudi Arabia and the Netherlands as a basis for rejecting the Branch's objection. However, the Defendant did not provide detailed justifications/ bases on the aforementioned Article. The Plaintiff also referred to the following excerpt from the Double Taxation Avoidance Agreement between the Kingdom of Saudi Arabia and the Kingdom of the Netherlands, which states that "in determining the profits of a permanent establishment, it shall be permitted to deduct expenses incurred for the purposes of the business of the permanent establishment, including general executive and administrative expenses, whether incurred in the country in which the permanent establishment is located or elsewhere...", and therefore the allocation ... The head office of such joint expenses... Saudi Arabia as general administrative expenses incurred by the branch, and therefore they must be considered deductible expenses in line with the Double Taxation Avoidance Agreement between the Netherlands and the Kingdom of Saudi Arabia, as referred to by the Plaintiff in Article 5 (2) – Permanent Establishment of the agreement, where the branch is considered a permanent establishment, and therefore it is necessary to disclose the revenues and expenses earned or incurred by the Saudi branch in the tax return and settle the tax due on it duly.

By presenting the statement of claim to the Defendant, it replied that it amended the profit by the estimated expenses paid to the head office as expenses that are not deductible from the tax base based on subparagraph (c) of paragraph (10) in Article (10) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, according to the fact that by reviewing the invoices submitted by the Plaintiff between its and the head office (... Netherlands) It became clear to the Defendant that the nature of the services provided consists of supplying corporate support functions services for the periods from January 2017 to September 2017 AD, in addition to the period from October 2017 AD to November 2017. The Defendant indicated that the documents submitted by the Plaintiff, represented by (the transfer pricing report), show that cost allocation with branches results from services provided to them on the basis of (customer revenues), as shown in point No. (5.5) (allocation of corporate support functions costs) from the report attached to the case file. The Defendant referred to the Plaintiff's statement in its objection petition that costs are divided among those branches and subsidiary companies proportionally according to their revenues, as shown in the text excerpt in the Defendant's reply memorandum attached to the case file. In light of the above, the Defendant concluded that such expenses are not allowable for deduction. Regarding what the Plaintiff indicated in its objection petition that the expenses constitute necessary and ordinary business expenses to generate the branch's taxable income and therefore should be considered allowable deductible expenses for the year 2017 AD, the Authority responds that this clause is governed by a clear regulatory text, and anything else would be considered a procedure contrary to the proper regulatory requirement, according to the provisions of sub-paragraph (c) of paragraph (10) of Article (10) of the Executive Regulations of the Income Tax Law referred to above. Based on paragraph (3) of Article (7) of the double taxation avoidance agreement signed between the

Kingdom and Holland, it becomes clear that what is meant by those expenses are actual expenses and not estimated expenses. Since the Plaintiff's objection is limited to the deduction of head office fees that were charged to the branch based on the percentage of the branch's revenues, which is considered an accounting procedure, for tax purposes these amounts do not represent actual expenses for the branch and cannot be charged to it for tax purposes based on the text of paragraph (10) of Article (10) mentioned above. Therefore, the Authority confirms the correctness and soundness of its procedure.

on Sunday, corresponding to: on 18/02/ 2024, the circuit held its session remotely to hear the case, and the Plaintiff's representative attended ... national ID number: (...) Under the commercial register attached to the case file, and attended/ ... national ID number: (...), as the representative of the Defendant/Zakat, Tax and Customs Authority, under the authorization issued by the Deputy Governor of the Zakat, Tax and Customs Authority for Legal Affairs No.:(.../.../1444) and dated: 11/05/1444 AH. asked what they would like to add, both parties were satisfied with what they had previously submitted. the Circuit decided to adjourn the hearing to deliberate.

### Grounds:

having reviewed the Zakat Law promulgated by Royal Decree no: (17/28/577) and date: 14/03/1376 AH, and its executive regulations issued by the Minister of Finance Decision no: (2082) on: 01/06/1438 AH and its amendments, and after reviewing the Income Tax Law promulgated by Royal Decree No: (M/1) and date: 15/1/1425 AH and its amendments, and its executive regulations issued by the Minister of Finance's decision no: (1535) and date: after reviewing the Rules of Procedure of the Zakat, Tax and Customs Committees issued by Royal Decree No. 11/06/1425 AH and its amendments: (25711) and date: 08/04/1445 AH. and relevant laws and regulations.

Procedurally, Whereas the Plaintiff aims through her lawsuit to annul the decision of the Zakat, Tax and Customs Authority regarding the tax assessment for the year 2017 AD, and whereas this dispute is considered among the disputes falling within the jurisdiction of the Circuits of the Zakat and Tax Appellate Committee pursuant to the Rules of Procedure of the Zakat, Tax and Customs Committees, and whereas the Plaintiff was notified of the objection result on 23/07/2023 AD, and submitted the lawsuit through the electronic portal on 21/08/2023 AD, accordingly the lawsuit was filed within the prescribed period as stipulated by law in accordance with Article (5) of the Rules of Procedure of the Zakat, Tax and Customs Committees, and whereas the lawsuit was filed by a person with legal standing, it is therefore incumbent upon the Circuit to accept the lawsuit procedurally.

In terms of the subject matter, as the Circuit contemplates the papers and documents included in the case file, and the requests, defense and defenses presented by its parties, it has become clear to the Circuit that the dispute lies in the issuance by the Defendant of the tax assessment for the year 2017 AD, where the Plaintiff objects to the Defendant's procedure of not allowing the deduction of the fees incurred from the



head office ... The Netherlands with a total of (9,942,015) riyals and added to the adjusted net profit/loss for 2017. Whereas the Defendant argued that it amended the profit by the estimated expenses paid to the head office as expenses that are not deductible from the tax base based on subparagraph (c) of paragraph (10) in Article (10) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, and accordingly; and based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH, which stipulates that: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. D- It shall not be of a capitalistic nature, "and based on paragraph (10) of Article (10) of the Executive Regulations of the Income Tax Law, which stipulates that: "Expenses that may not be deducted The amounts paid to the main centers abroad by the branches operating in the Kingdom and wholly owned by them in return for the following: (a) A royalty, royalty, or commission. (b) Proceeds of loans or any other financial fees. C- Indirect administrative and general expenses determined by the distribution method on a discretionary basis ", and based on paragraph (3) of Article (7) of the Double Taxation Avoidance Agreement signed between the Kingdom of Saudi Arabia and the Netherlands, which stipulates that: "In determining the profits of a permanent establishment, deductions shall be made for expenses incurred for the purposes of the business of the permanent establishment, including general executive and administrative expenses, whether incurred in the country in which the permanent establishment is located or elsewhere. However, such deduction shall not be allowed for any amounts paid, if any (other than what was paid for the recovery of actual expenses) by the permanent establishment of the head office of the project or any of its other offices in the form of royalties, fees or other similar payments for the use of patent rights or other rights or in the form of commissions for the performance of certain services or for management, or (except in the case of the banking project) in the form of income from debt claims in respect of funds lent to the head office of the project or any of its other offices ", and based on paragraph No. (3) of Article (57) of the Executive Regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, which stipulates that: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the above, additional information was requested on 07/12/2023 AD represented in submitting (a) copies of the financial statements of the branch of Saudi... Company in addition to the financial statements of the head office of the ... company "Netherlands", b. Clarify whether the branch has withheld tax for payments for services to the head office in the Netherlands") and the

Plaintiff did not respond to those requests, nor did it provide an explanation of the grounds for charging those expenses. Whereas, the dispute between the two parties lies in the Plaintiff's claim to allow the deduction of expenses incurred by the head office as expenses not related to income generation (group subscription fees), because the contract with the group companies stipulates that the Saudi branch is the party providing the service and not the party benefiting from it, and since the Plaintiff paid in its statement of claim that the fees charged by the head office ...(Netherlands) represent legal and financing costs, information technology, marketing, human resources and technical support incurred by the group ... On a consolidated basis on behalf of all branches and their subsidiaries and they are divided between those branches and companies on a pro rata basis according to their revenues, in addition to indicating that they submit their response regarding these expenses related to the work expenses necessary to meet the services required from the Ministry of Interior, where the Plaintiff only submitted the contract concluded with the Ministry of Interior, in addition to the pricing policy of the transactions applied to it, without clarifying the basis of these expenses contrary to what the Defendant explained in its response memorandum about the contract between the group companies, and therefore what the Plaintiff submitted is not considered as a continuing evidence to resolve the subject in dispute. As for what the Plaintiff indicated about its reliance on the provisions of paragraph (3) of Article (7) related to business profits by allowing the deduction of expenses incurred for the purposes of the business of the permanent establishment from the double taxation agreements between the Government of the Kingdom of Saudi Arabia and the Government of the Netherlands, it became clear that the Plaintiff did not provide the basis for calculating those expenses to apply the provisions of the agreement, which ends with the rejection of the Plaintiff's objection to the clause excluding the fees incurred from ... (Headquarters)

for these grounds and after deliberation, the Circuit unanimously decided as follows:

#### Decision:

Reject the Plaintiff's objection to the clause excluding fees incurred from ... This decision was issued in the presence of both parties, and the committee set a period of thirty days to receive a copy of the decision through the website of the General Secretariat for Zakat, Tax, and Customs Committees, and both parties to the case have the right to appeal according to the law within (30) days from the day following the specified date for receiving it, so that it becomes final and enforceable after the expiration of this period if no objection is submitted.

The judgment has become final due to the expiration of the objection period in accordance with paragraph (2) of Article (33) of the rules of operation of the Zakat and Tax Committees...



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024- 180638

Case No. I-2023-180638

### Keywords

Income Tax - Expenses Incurred to Generate Income -Bad Debts - Acceptance of Taxpayer Appeal

### Summary:

The Taxpayer and the Zakat, Tax and Customs Authority objected to the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6911), where the parties' appeal lies on the clause (delay fine), and the Taxpayer's appeal lies on the clause (bad debts), as it claims to submit documents proving that they met the conditions for their deduction. Whereas, the Appeal Committee established that the Taxpayer submitted the financial statements, withholding tax returns, a statement of bad debts, and a report from a chartered accountant stating the accuracy and validity of the written-off trade receivables. Consequently, the Taxpayer's appeal is accepted partially, and the decision of the circuit regarding this clause is amended.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (14) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (a) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (3) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:

The appeal submitted on 26/02/2023 AD was considered by the Zakat, Tax and Customs Authority, and the appeal submitted on 27/02/2023 AD by/..., National ID No. (...) as agent for the appellant company under Agency No. (...) ...and bar license number (...), against the decision of the Third Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh City, number (IFR-2022-6911) issued in case number (I-

2021-86903) related to the tax assessment for the year 2018, in the lawsuit filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

First: Acceptance of the petition for reconsideration procedurally.

Secondly: On the merits:

- 1- Amending the Defendant's decision regarding the clause (salary differences).
- 2- Amending the Defendant's decision regarding the clause (expenses charged by the head office).
- 3- Cancel the Defendant's decision regarding (temporary employment) clause.
- 4- Amending the Defendant's decision with respect to the delay penalties clause.
- 5- Reject all other objections.

since this decision was not accepted by the parties, each of them filed a list of appeals, which included the following:

With regard to the Taxpayer's appeal against the decision of the Adjudication Circuit, its appeal is in relation to the clause (bad debts), it claims that these bad debts were disclosed as provisions in the financial statements for previous years, which were audited by certified auditors, and therefore these provisions were subject to the calculation of taxable income in the relevant tax returns. Moreover, the branch wrote off these bad debts from its books of accounts during 2018 AD after making all possible efforts and based on the conclusion that these bad debts will not be recovered. However, based on the write-off of these amounts, the Branch has requested the use of those written-off amounts in the 2018 AD tax return, and confirms that bad debts include only third parties not associated with the Branch, and therefore all parties to the written-off bad debts mentioned in the list are considered to be eligible for deduction. The liability lies on the Taxpayer's impediment to proving the accuracy of revenues, expenses and other information contained in the declaration. Based on the above, the Branch has provided the relevant supporting documents to clearly demonstrate that the expenses themselves are deductible, such as the auditors' certificate of bad debts written off and details of bad debts written off. With regard to the Taxpayer's appeal on the clause (salary differences), the company explained that the Authority has excluded the difference in salaries and wages amounting to (3,201,696) riyals on the basis that these differences are not included in the social insurance contribution. The company would like to emphasize that the difference between salaries and housing allowance mentioned in the trial balance and what is shown in the insurance certificate of its sponsorship (i.e. residence) and temporary employees brought by the company on temporary work visit visas. The social performance is due to the fact that some salary elements are not counted in the social insurance since the salaries and expenses related to wages, allowances and benefits for employees belong to the permanent employees appointed by the company under the tasks of its branch in the Kingdom of Saudi Arabia. The branch reports that the difference in salaries subject to social insurance is due to differences in the timing of





employees' departure from the branch records and their registration canceled in the system. In addition, there are restrictions in the social insurance law regarding the registration of salary increases during the year, and it will be found to the esteemed committee that the difference in salaries represents part of the cost of employees incurred by the branch in providing services to its customers. The social insurance rules stipulate that the basic salary and housing allowance are part of the salaries subject to social insurance and other costs related to employees such as overtime, travel and salary increases during the start of work are not recorded for social insurance salaries, and the Authority's position not to allow the deduction of any difference in salaries subject to social insurance is unjustified and incompatible with tax regulations. With regard to the Taxpayer's appeal regarding the clause (delay fine), the Taxpayer explained that the authority informed the esteemed committee that the Taxpayer must pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay, calculated from the date the tax is due to the date of payment. However, the branch does not agree with the Authority's treatment of the imposition of a delay fine. The additional corporate income tax arose due to the difference in the branch's point of view and the Authority's point of view. The additional tax imposed by the assessment did not result from the deliberate non-payment of the taxes due by the company. The branch has settled its obligations and complied with the regulations in force in the Kingdom during the statutory period and in the light of the provisions stipulated in this regard. Accordingly, and based on what is mentioned above, the fine should be calculated when the tax obligation becomes final based on what is stated in Article No. (71-2) of the Executive Regulations. The reason for this is the fact that issuing the assessment and completing the objection and appeal procedures before the appellate bodies may take years, and since the difference is a technical difference on the issue of imposing the tax on the basis of the aforementioned defenses, the branch believes that such fines should not be issued until a final decision on the tax claim is issued and after all levels of appeal and objection have been exhausted between the Taxpayer and the authority. Accordingly, the Taxpayer demands the reversal of the decision of the Adjudication Circuit of the clauses subject to the appeal for the above grounds. This decision was also not accepted by the Authority, so it submitted an appeal regulation that was reviewed by the Circuit, where the Authority's appeal lies on the clause (delay fine). The Authority clarifies that the delay fine was imposed on the unpaid tax differences on the regular date based on paragraph (a) of Article (77) of the Income Tax Law, which stipulates: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes the delay in paying the tax required for withholding and accelerated payments and is calculated from the date the tax is due to the date of payment", as well as based on paragraph (1/b) of Article 68 of the Executive Regulations of the Income Tax Law, which states: "In addition to the fines mentioned in the previous article (1%) of the unpaid tax for every thirty days of delay in the following cases, including what is stated in the paragraph: - b- Delay in the payment of the tax due under the assessment ing of the interest" and since the fine is consequential and due to the Authority's appeal on the above clause, it adheres to the validity of its procedure in imposing the delay fine on the



unpaid tax differences, and based on the foregoing, the decision of the Circuit in this lawsuit subject to appeal is invalid and the right of cassation is without any doubt, and therefore the Authority demands the acceptance of its appeal and the cassation of the decision of the Adjudication Circuit in the clause subject of its appeal.

on Tuesday, on: 21/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are written in the minutes, via video communication in accordance with the procedures of remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No: (25711) and dated: 08/04/1445 AH Hijri; and on the submissions submitted, and the papers and documents contained in the case file, and after discussion and deliberation, the Circuit considers the need for the case to be attended by its parties, and decides to postpone the hearing of the case to a session to be determined later, provided that the parties are notified of the attendance.

on Tuesday, on: 28/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are written in the minutes, via video communication in accordance with the procedures of remote video litigation; based on the provisions of clause (1) of Article 15 of the working rules of zakat, tax and customs committees issued by Royal Decree No: (25711) and dated: 08/04/1445 AH; By calling on the litigants, she/... (National ID No ....), in its capacity as the representative of the Appellant/Zakat, Tax and Customs Authority, pursuant to an authorization issued by the Deputy Governor of the Zakat, Tax and Customs Authority for Legal Affairs No. (.../.../1445) dated 19/03/1445 AH, and attended ... National ID No. (...), in its capacity as the representative of the appellee under the power of attorney No. (...), and by informing the Circuit of the case file No. (I- 2023-180638) related to the Authority's appeal request and the case No. (ZI- 2023- 181391) related to the Taxpayer's appeal request, it was found that the two appeals against the same adjudication decision issued in the case No. ( I -2021- 86903) and by asking the litigants about the merger of the case number ( I -2023-180638), and ( ZI-2023- 181391) become number ( I -2023- 180638) and they responded by approving it. By asking the parties what they would like to add, the Plaintiff's attorney requested a period of time to submit a supplementary memorandum, the Circuit decided to grant the Taxpayer a period of (5) working days to submit what they have to the Secretariat, ending on: 04/06/2024 AD, and granting the Taxpayer a subsequent period of (5) working days ending on 11/06/2024 AD. After this date, the pleadings will be closed and the case will be submitted for deliberation and decision, and the circuit will not accept any new documents or memoranda that were not submitted before the aforementioned date. Provided that the next hearing shall be on 25/06/2024 AD, which shall be a hearing for pronouncement of the decision.

on Tuesday, on: 25/06/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are written in the minutes, via video communication in accordance with the procedures of remote video litigation; based on the provisions of clause (1) of Article

15 of the working rules of zakat, tax and customs committees issued by Royal Decree No: (25711) and dated: 08/04/1445 AH; By calling on the litigants, she/... (National ID No ...), in its capacity as the representative of the Appellant/Zakat, Tax and Customs Authority, pursuant to an authorization issued by the Deputy Governor of the Zakat, Tax and Customs Authority for Legal Affairs No. (.../.../1445) dated 19/03/1445 AH, and attended ... national ID No. (...), as agent for the Defendant under Agency No. (...), the Circuit decided to close the hearing and deliberations.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and since it is with regard to the Taxpayer's appeal on the clause (bad debts), and where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit towards this clause, as it claims to submit documents proving that it has met the conditions for deducting bad debts. Based on Article (14) of the Income Tax Law related to bad debts, which stipulates that: (a) A Taxpayer may deduct bad debts arising from sales of goods or services that have been previously declared as a taxable income of the Taxpayer. (b) Bad debt may be deducted when it is written off from the books of the Taxpayer whenever there is appropriate evidence of the impossibility of collecting it in accordance with what is specified in the regulation", and based on paragraph No. (3) of Article (9) of the Executive Regulations of the Income Tax Law, which stipulates that: "Bad Debts provided they meet the following conditions: (a) If bad debts were previously stated in the declarations as part of the Taxpayer's revenues in the relevant year in which the revenue was due. (b) If bad debts are the result of sales of goods or services. C- The Taxpayer must provide a certificate from their legal accountant indicating the write-off of these debts from the books by a decision from the authorized person. (d) If all legal procedures have been taken to collect the debts with no success; and it is proven that such debts are uncollectable by convincing evidence such as the issuance of a judicial ruling or the debtor's bankruptcy. (e) If debts are not due on parties related to the Taxpayer. (f) The Taxpayer undertakes to reinstate as income any written off debt whenever collected. Based on the foregoing, and by reviewing the documents submitted in the case file, it is clear that the Taxpayer submitted the financial statements, withholding tax returns, a statement of bad debts, and a report from a chartered accountant stating the accuracy and validity of the trade receivables written off during the year 2018 AD for the purpose of submitting them to the Authority, while the Authority argued the existence of a judgment issued to the Taxpayer in the case against the ... company, and by reviewing the above judgment, it is clear that the Taxpayer can collect these debts, as the judgment was issued in its favor of a total amount of (1,425,185.80) riyals, and with regard to the remaining amount (4,383,736.2) riyals, and for the Taxpayer to submit

documents proving that it has met the conditions for deducting bad debts stipulated in paragraph (3) of Article (9) of the Executive Regulations of the Income Tax Law referred to above, which ends with the Circuit partially accepting the Taxpayer's appeal and amending the decision of the Adjudication Circuit on this clause.

Regarding the Taxpayer's appeal on the clause (salary difference), where the Taxpayer's appeal lies in objecting to the decision of the Adjudication Circuit regarding this clause, as it claims that the difference in salaries represents part of the cost of employees incurred by the branch in providing services to its customers. Based on paragraph (1) of Article (9) of the executive regulations of the income tax law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which states the following: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. Be related to the tax year D. Not be of a capitalistic nature." Based on the above, it turns out that the focus of the dispute lies on the claim of the Taxpayer to deduct the remaining amount (2,047,233.4) that is not documentarily supported, and to review the case file and the defenses and documents it contains, it turns out that the Taxpayer submitted a settlement of the differences amounting to (3,201,696) riyals. He also submitted a sample of invoices and amounts paid to the temporary employees whose names are shown in a list for each month and the documents supporting the payments. He submitted an analytical statement of salaries explaining the account numbers. Accordingly, it turns out that the amount in dispute represents an actual expense that is documentarily supported. The Authority also left its appeal in accordance with the outcome of the adjudication decision of the clause in dispute, which supports the acceptance of these expenses and the submission of the required documents by the Taxpayer, which ends with the circuit accepting the Taxpayer's appeal and canceling the decision of the circuit of the dismissal on this clause.

regarding the parties' appeal on the delay fine clause, and based on paragraph (a) of Article 77 of the Income Tax Law promulgated by Royal Decree No. M/1 dated 15/01/1425 AH, which stipulates that "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment", and based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law, which stipulates that "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax



payable under the provisions of the law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these regulations, including cases that are contested, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on the foregoing, and where the Circuit's decision to amend the Circuit's decision to impose a delay fine from the due date on the clauses in which the Taxpayer's appeal was rejected and the delay fine was forfeited on the clauses in which the Taxpayer's appeal was accepted and the Authority's appeal for the loss of the original taxation was rejected, the Circuit ends with amending the decision of the Adjudication Circuit regarding the parties' appeal on this clause.

Regarding the Authority's appeal regarding the clause (temporary employment), the clause (salary differences) and the clause (expenses charged by the head office), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement is reached before the case is formally recorded, it is necessary to document the substance of the case and the response before recording the agreement, taking into consideration that the original case must fall within the jurisdiction of the Circuit, even if the content of the agreement falls within the jurisdiction of another court or circuit, provided that the subject matter of the case or part of it is among what has been agreed upon." Based on the foregoing, and whereas it has been established to this Circuit that the Authority has requested to abandon the appeal in accordance with what was stated in the letter issued by it in the supplementary memorandum, which contained: "The Authority wishes to inform the respected Circuit of its withdrawal of its appeal regarding the above-mentioned clause, which renders the dispute concluded in this matter in accordance with what the decision concluded in its reasoning..." therefore, the Circuit shall accept the abandonment of the litigation.

with regard to the Taxpayer's appeal on the remaining clauses at issue in the case, the Circuit has no fault in adopting the grounds for the decision under appeal without adding to them, if it determines that these grounds make it unnecessary to introduce anything new, since in upholding the decision with the content of these grounds, it is clear that the Circuit did not find any objections to the decision that merit a response beyond what is contained in these grounds; whereas it is established that the decision under appeal regarding the dispute regarding the clauses under appeal was consistent with the valid grounds on which it was based and sufficient to carry its judgment since the issuing Circuit scrutinized the dispute and came to the conclusion it reached in its operative part, and since this Circuit did not notice any reason to appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject the Taxpayer's appeal

and uphold the decision of the Adjudication Circuit with respect to the rest of the clauses in the case, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

First: Acceptance of the appeal procedurally from the Taxpayer / ... company, Commercial Registration (...), Unique Number (...). The appeal submitted by the Zakat, Tax and Customs Authority against the decision of the first circuit regarding violations and disputes of income tax in the city of Dammam with number (IFR-2022-6911) issued in case number (I-2021-86903) related to the tax assessment for the year 2018 AD.

Second: On the merits:

- 1- Acceptance of the abandonment of the litigation in connection with the Authority's appeal on the clause (temporary employment).
- 2- Accepting the appeal of the partially Taxpayer and amending the decision of the Adjudication Circuit regarding the clause (bad debts).
- 3- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (travel expenses).
- 4- With regard to the parties' appeal on the clause (salary difference):
  - (a) Accepting the abandonment of litigation in relation to the appeal of the authority.
  - (b) accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit.
- 5- With regard to the parties' appeal against the clause (expenses charged by the head office):
  - (a) Accepting the abandonment of litigation in relation to the appeal of the authority.
  - (b) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit.
- 6- Amending the decision of the Adjudication Circuit regarding the appeal of the two parties on the clause (delay fine).



committee for adjudicating tax violations and disputes  
The First Circuit for Income Tax Violations and Disputes  
In Dammam

Decision No. IZD -2024- 220541

Case No. I-2023-220541

### Keywords

Income tax - Expenses Incurred to Generate Income -not allowing royalty expenses - rejecting the  
Taxpayer's objection

### Summary:

The Taxpayer's objection to the tax assessment for the year 2017 AD, issued by the Zakat, Tax and Customs Authority, which is represented in several clauses: first clause: (The statutory authority to bind the Authority) on its procedure of issuing an incomplete bind, the procedural elements for the year of the dispute, the second clause (not allowing the royalty expenses charged by the head office) on its procedure of not allowing the royalty expenses charged by the head office to be deducted from the adjusted net profit. Whereas it has been proven to the adjudication committee that the dispute is in the application of Article (10) Paragraph (10) of the Income Tax Regulations, and whereas the structure of the Holding Group submitted by the Taxpayer confirms what the Authority has indicated and does not deny it, and whereas the Taxpayer acknowledges that all royalty payments are paid to related companies owned by the same ultimate owner who owns the head office of the branch of.... (Assignee). This resulted in rejection of Taxpayer's objection in all the clauses in question.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (b) of Article (62) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (c) of Article (63) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (10) of Article (10) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

- Paragraph (7) of Article (59) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:



The facts of this case are summarized as follows:/ ..., Egyptian Nationality (Resident ID No....) In its capacity as the legal representative of the Plaintiff, a branch of a company... Commercial Registration No. (...) Pursuant to the decision of the parent company to appoint him as the general manager of the branch in the Kingdom of Saudi Arabia, it submitted its objection to the tax assessment for 2017 AD issued by the Zakat, Tax and Customs Authority, which is represented by its objection in four clauses: first clause: Statutory authority to bind the Authority: The Plaintiff objects to the Defendant's procedure of issuing the incomplete assessment of the procedural elements of the year of the dispute. The grounds for the amendments it has made and the grounds on which it relied have not been indicated, which constitutes an explicit violation of what is stated in paragraph (c) of Article (62) of the Income Tax Law, and paragraph (7) of Article (59) of the Income Tax Law, as the failure to inform it of the grounds on which the Defendant relied in its amendments to its declaration seriously hinders it from objecting to the grounds for the amendment. The Plaintiff relies on the decision of the Appeal Committee No. (IR-2021-283) and the decision of the Audit Authority No. (83) of 1429 AH of the Board of Grievances. second clause: Failure to allow royalty expenses charged from the head office: The Plaintiff objects to the Defendant's procedure of not allowing the deduction of the royalty expenses charged from the head office in the amount of (630,365) riyals for the year 2017 from the adjusted net profit. The Plaintiff stated that the company... It is a legal entity different from the head office of the branch (company...) Which is confirmed by the recent commercial registration of the branch as well as the structure of the holding group and the certificates of incorporation of the branch and the ... company, which means that the ... company To which the royalties were paid and the company (...) They are two separate legal entities with separate tax registrations in the United States. The Plaintiff confirms that the royalties paid are to a sister company within the group and not to the head office of the branch. Therefore, what the Defendant relied on in paragraph (10) of Article (10) of the Executive Regulations of the Income Tax Law is not relevant. The Plaintiff relies on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law as expenses related to the activity and fulfilling the conditions, adding that it deducted the amount paid to the ... company 15% of the royalty and deposited with the Defendant. Therefore, the Defendant's treatment of the royalties paid to a sister company leads to the taxation of an clause of income twice, which is a violation of the principle of justice in the tax law locally and internationally. Withholding tax is a mechanism for taxing income for the recipient of income from the source. Accordingly, the Plaintiff demands the cancellation of the Defendant's action. third clause: Failure to allow expenses charged from the head office: The Plaintiff objects to the Defendant's procedure of not allowing the deduction of the expenses charged to the head office in the amount of (3,429,554) riyals for the year 2017 AD from the adjusted net profit. The Plaintiff stated that the ... company It is not the head office of the branch, and it is

just a sister company within the group. It added that the reason mentioned in assessment ing the Defendant is the amendment based on Article (10) of the Executive Regulations of the Income Tax Law, in addition to its failure to submit agreements and supporting documents based on Article fifty-seven, paragraph (3) of the Executive Regulations of the Income Tax Law, which indicates that the Defendant was not sure of the reason for not allowing the deduction of (3,249,554) of the expenses paid to a sister company. The Plaintiff confirms its commitment to the tax laws and regulations in the Kingdom and that it has withheld and supplied withholding tax on these payments to the Defendant. fourth clause: Delay fines: The Plaintiff objects to the Defendant's procedure of imposing delay fines on unpaid tax differences on the regular date, as the delay fine cannot be imposed on any tax arising due to a technical dispute between the Plaintiff and the Authority.

By presenting the statement of claim to the Defendant, it replied with a memorandum that included that with regard to the clause of the statutory authority to bind the Authority for the year 2017 AD: It stated that with regard to what the Plaintiff indicated that it did not provide the grounds for the amendments when issuing the assessment, the assessment notices and the amendments issued by it to the Plaintiff are in accordance with the provisions of paragraph (7) of Article (59) of the Executive Regulations of the Income Tax Law, where it indicated that the reason for the amendment is the status of the examination as well as the reference to the amendments related to the clauses according to the amended assessment s, and therefore it is clear that what the Plaintiff mentioned is unfounded by evidence of its objection to the clauses contained in its letter submitted before it, which indicates the Plaintiff's knowledge of the grounds for the amendment and its grounds. As for what the Plaintiff referred to from the decision of the Audit Board of the Board of Grievances, it is an improper basis because what applies to this case is the provisions of the Income Tax Law and its executive regulations, and the appeal decision referred to by the Plaintiff does not apply to this clause because of the different facts and causes, which confirms the validity and integrity of the authority's procedure in rejecting this clause. With regard to the non-allowance of royalty expenses charged from the head office: stated that it amended the book net profit by adding the clause based on paragraph (10) of Article (10) of the Executive Regulations of the Income Tax Law, and adds that through reviewing the company's financial statements note number (10), it became clear that it is a royalty from an affiliated entity, and that the royalty fees are paid to entities that own the branch directly and indirectly in full, which are considered to be in the capacity of the head office for the Kingdom's branch, and that the results of the branch's operations (company...) And the two unrelated entities (company...) And(Company...— America), are included in the accounts of the owning company (... — Ireland), which owns the branch and the head office (...) And the two related entities 100%, and as a result, the Authority rejected the clause of royalty charged by the head office – concession expenses in the amount of (630,365) riyals, based on paragraph (10) of Article (10) of the Executive Regulations of the Income Tax Law referred to above, and accordingly the Defendant confirms the validity and integrity of its procedure. With regard to the disallowance of expenses charged from the head office: It stated that it amended the net book profit by adding the clause



based on paragraph (10) of Article (10) of the Executive Regulations of the Income Tax Law, and added that by reviewing the financial statements, clarification No. (10) turned out to be expenses charged by affiliated entities, and since the Plaintiff did not submit the agreements and documents that support the validity of what it claims, an clause of expenses charged by the head office in the amount of (3,429,554) riyals was rejected for not submitting the agreements, based on paragraph (3) of Article (57) of the Executive Regulations of the Income Tax Law. With regard to the delay penalties clause: It stated that it imposed the delay fine in accordance with the above rejected clauses and on the unpaid tax differences on the statutory date based on paragraphs (a) and (b) of Article (77) of the Income Tax Law, as well as based on Article (68) paragraph (1/b) of the Executive Regulations of the Income Tax Law, which is calculated after the statutory date for submitting the declaration in accordance with the statutory requirement.

On Monday, 25/03/2024 AD, the Circuit held its session remotely to consider the case; and by appeal to the litigants, the legal representative of the Plaintiff attended..., Resident ID No.: (...) Pursuant to the decision of the parent company to appoint him as the general manager of the branch in the Kingdom of Arabia, and the representative of the Defendant was present... national ID number: (...) With its authorization issued by the Deputy Governor of the Zakat, Tax and Customs Authority for Legal Affairs No.: (.../.../.../1445) dated: 19/03/1445 AH Hijri, and upon asking the representative of the Plaintiff about its representative's lawsuit, it replied that it does not depart from what was stated in the lawsuit list previously deposited with the General Secretariat of Zakat, Tax and Customs Committees. Faced with this, the representative of the Defendant replied that it adheres to the Defendant's response previously deposited with the General Secretariat of Zakat, Tax and Customs Committees. By asking the two parties whether they have other statements, they replied in a manner that does not depart from what is mentioned in the memoranda submitted to the Circuit. Accordingly, the Circuit decided to adjourn the session for deliberation.

### Grounds:

having reviewed the Zakat Law issued by Royal Decree No. (17/28/577 AD) dated 14/03/1376 AH and its Executive Regulations issued by Minister of Finance Decision No. (2082) dated 01/06/1438 AH and its amendments, and having reviewed the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH and its amendments, and its Executive Regulations issued by Minister of Finance Decision No. (1535) dated 11/6/1425H and its amendments, and after reviewing the Rules of Procedure of the Zakat, Tax and Customs Committees issued by Royal Decree No. (25711) dated 08/04/1445 AH. and relevant laws and regulations.

Procedurally, since the Plaintiff aims to cancel the decision of the Zakat, Tax and Customs Authority regarding the tax assessment for 2017AD, and since this dispute is considered one of the disputes within the jurisdiction of the Zakat and Tax Adjudication Committee circles under the Zakat, Tax and Customs Committees' working rules, and since the Plaintiff was informed of the result of the objection on

04/09/2023 AD, and submitted the case through the electronic portal on 03/10/2023 AD, therefore, the lawsuit was submitted within the legally prescribed period in accordance with Article (5) of the Rules of Procedure of the Zakat, Tax and Customs Committees, and since the lawsuit was submitted by a person with standing, the Circuit shall accept the lawsuit procedurally.

By examining the papers and documents included in the case file, and the requests, defense and defenses presented by its parties, the Circuit found that the dispute lies in the issuance by the Defendant of the tax assessment for 2017 AD, which is represented by its objection in four clauses of their statement as follows:

first clause: The statutory authority to bind the Authority for the year 2017 AD:

Whereas, the Plaintiff objects to the Defendant's procedure of issuing the incomplete binding procedural elements, while the Defendant argued that it has indicated that the reason for the amendment is the status of the examination as well as referring to the amendments related to the clauses according to the amended bindings. Whereas, Paragraph (b) of Article (62) entitled (Examination and Linkage Procedures) of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/1/1425 AH stipulates that: "(b) The Circuit shall notify the Taxpayer of the tax assessment under paragraph (a) of this Article and the tax due on him by a registered official letter, or by any other means that proves its receipt of the notification. Paragraph (7) of Article (59) of the Executive Regulations of Income Tax issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH stipulates that: "7- If the Circuit does not approve the Taxpayer's declaration, it shall notify him of the amendments it has made to its tax declaration, the grounds for the amendment, the amount of tax and penalties resulting therefrom, its right to object, and the statutory period specified for the objection. The notice shall be by registered mail or by any other means proving that it has received the notice." Based on the foregoing, and by reviewing the amendment letter for the year 2017 AD issued by the Defendant on 13/04/2023 AD, it was found that the letter fulfilled its procedural elements stipulated by law; where the clauses subject to the amendment, its grounds and the statutory articles based on them were indicated, which shows that the Defendant fulfilled the procedures stipulated in paragraph (7) of Article (59) of the Income Tax Executive Regulations, and since the Plaintiff was notified by the Defendant through the official electronic services, whether through the Defendant's revenue system, e-mail or phone messages registered with the Defendant of the outstanding differences and can refer to the amended declaration clauses automatically and know the amendments and their grounds received, and since the amendment letter, which does not contain the grounds for the amendment, is issued by the Legal Circuit and is related to its objection, and not the administrative decision subject of the assessment issued by the Inspection Circuit; which means that it is proven

second clause: Failure to allow royalty expenses charged from the head office:

Whereas the Plaintiff objects to the Defendant's procedure of not allowing the deduction of the royalty expenses charged from the head office in the amount of (630,365) riyals for the year 2017 AD from the



adjusted net profit, while the Defendant argued that the results of the operations of the branch (... company) And the two unrelated entities (... company) and (company...) – America), are included in the accounts of the owning company (... – Ireland), which owns the branch and the head office (...) and the two 100% related entities. article 10, paragraph (10) of the Executive Regulations of the Income Tax Law stipulates that "Amounts paid to the main centers abroad by branches operating in the Kingdom and wholly owned by them in exchange for the following: (a) A royalty, royalty, or commission. (b) Proceeds of loans or any other financial fees. C- Indirect administrative and public expenses determined by the distribution method on a discretionary basis ", as stipulated in paragraph (c) of Article (63) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH as follows: "The Authority may reallocate income and expenses in transactions between related parties or parties belonging to the same entity to reflect the income that would have been realized if the parties were independent and unrelated." Based on the above, and since the dispute is in the application of Article (10) Paragraph (10) of the Income Tax Regulations, and since the structure of the Holding Group submitted by the Plaintiff confirms what the Defendant referred to and does not deny, and since the Plaintiff acknowledges that all royalty payments are paid to related companies owned by the same ultimate owner who owns the head office of the branch of.... (The Plaintiff), and this is not affected by what the Plaintiff reported about its deduction of the amount paid to the ... company 15% of the royalty and that it was deposited with the Defendant, and that the Defendant's treatment of the royalties paid to a sister company leads to the taxation of an clause of income twice, since the amounts paid to the companies owned by one entity take the judgment of the amounts paid to the head office based on paragraph (10) of Article (10) of the Executive Regulations of the Income Tax Law relating to expenses that may not be deducted, and the Plaintiff's response about the incorrectness of what the Defendant referred to as considering the royalty expense paid to the two unrelated parties (the ... company) And(the company of...– America) because those royalties are paid only to the ... company; it does not affect the conclusion of the conclusion about considering the ... company As the head office, which ends with the Circuit rejecting the Plaintiff's objection.

third clause: Failure to allow expenses charged from the head office:

Whereas the Plaintiff objects to the Defendant's action of not allowing the deduction of the expenses charged to the head office in the amount of (3,429,554) riyals for the year 2017 AD from the adjusted net profit, and stated that the ... company It is not the head office of the branch, and it is just a sister company within the group, while the Defendant pushed to amend the net book profit, by adding the clause based on paragraph (10) of Article (10) of the Executive Regulations of the Income Tax Law in addition to the Plaintiff's failure to submit documents and agreements. article 10, paragraph (10) of the Executive Regulations of the Income Tax Law stipulates that "Amounts paid to the main centers abroad by branches operating in the Kingdom and wholly owned by them in exchange for the following: (a) A royalty, royalty, or commission. (b) Proceeds of loans or any other financial fees. C- Indirect administrative and public

expenses determined by the distribution method on a discretionary basis ", as stipulated in paragraph (c) of Article (63) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH as follows: "The Authority may reallocate income and expenses in transactions between related parties or parties belonging to the same entity to reflect the income that would have been realized if the parties were independent and unrelated." Based on the above, and since the main dispute is the application of the provisions of paragraph (10) of Article (10) of the Executive Regulations of the Income Tax Law, and where the Plaintiff confirms that those expenses charged are paid to the ... company It submitted the invoices related to it and its financial statements and indicated through its response that they are related to accounting and information technology services, and where the Circuit concluded in the second clause to consider the ... company These expenses are charged to it as the head office of the parent company (...— Ireland), the branch and the head office (... - The Plaintiff) and the related party in dispute (...) 100%, therefore, what is related to it takes its judgment, which ends with the Circuit rejecting the Plaintiff's objection.

fourth clause: Delay fines:

The Plaintiff objects to the Defendant's procedure of imposing delay fines on the unpaid tax differences on the regular date, as the delay fine cannot be imposed on any tax arising due to a technical dispute between the Plaintiff and the authority, while the Defendant argued that it imposed the delay fine in accordance with the above rejected clauses and on the unpaid tax differences on the regular date, which are calculated after the regular date of submitting the declaration. Whereas paragraph (a) of Article 77 of the Income Tax Law promulgated by Royal Decree No. M/1 dated 15/01/1425 AH stipulates that: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in the payment of the tax to be withheld and accelerated payments, calculated from the date the tax is due to the date of payment." Paragraph (1) of Article 68 of the executive regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b. Delay in paying the tax due under the Authority's assessment." Article 67(3) of the Executive Regulations of the Income Tax Law also stipulates: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the Law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these Regulations, including cases that are disputed, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on the above, and by reviewing the case file and the defenses and documents it contains, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the law and the amendments made by the Defendant, and since the dispute between the two parties is a dispute governed by clear statutory texts, and did not arise from a significant



difference in the interpretation of the statutory texts, and since the circuit ended in the second and third clauses to reject the Plaintiff's objection, therefore what is related to it takes its judgment, which ends with the circuit rejecting the Plaintiff's objection.

for these grounds and after deliberation, the Circuit unanimously decided as follows:

### Decision:

Rejecting the Plaintiff's objection in all the clauses at issue.

The judgment has become final due to the expiration of the objection period in accordance with paragraph (2) of Article (33) of the rules of operation of the Zakat and Tax Committees...



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024- 173946

Case No. I-2023-173946

### Keywords

Income tax - Expenses Incurred to Generate Income -not allowing deduction of social insurance expenses - accepting the Taxpayer's appeal

### Summary:

The Taxpayer objected to the decision of the First Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2604), where its appeal lies on the clause (Foreign Procurement Differences for 2015 AD), as it claims that it is importing on behalf of the company (...), and the clause (not allowing the deduction of social insurance expenses for 2015 AD), as it claims to submit the supporting documents. Whereas, the Appeal Committee established that the Authority did not notice the error in the classification according to the Taxpayer's declaration submitted to it, as what was included in the declaration for the Saudi side is the expense related to the foreign side, and to avoid that wrong treatment, the entire insurance expense contained in the declaration was taken and matched with the social insurance certificate, which resulted in a difference of (1,177) riyals only as mentioned above. Consequently, the Taxpayer's appeal is accepted partially, and the decision of the circuit regarding this clause is amended.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:

The submitted appeal was heard on: 31/01/2023 AD, of/ ..., Resident ID No. (...), in its capacity as the legal representative of the appellant company under its Memorandum of Association, on the decision of the First

Circuit to adjudicate income tax violations and disputes in Jeddah Governorate No. (IZJ-2022-2604) issued in Case No. (I-2021-74886) related to the tax assessment for 2015 AD, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the adjudication circuit ruled the following:

First: The Plaintiff's objection to the customs duties clause was rejected.

Secondly: The Plaintiff's objection to the external procurement differences clause was rejected.

Third: The Claimant's objection to a revenue clause from an improperly traded joint venture was rejected to the tax base.

Fourth: Rejection of the Plaintiff's objection to the clause not to allow a deduction of (60%) of the share in the net loss of joint ventures.

Fifth: Reject the Plaintiff's objection to the clause of not allowing the deduction of social insurance expenses.

Sixth: The Plaintiff's objection to the clause not allowing the adjustment of the gains from the sale of fixed assets was rejected.

Whereas this decision was not accepted by the Taxpayer (the ... company), it submitted an appeal regulation reviewed by the Circuit, where the Taxpayer's appeal lies on the clause (foreign procurement differences for the year 2015 AD), the Taxpayer explained that the Authority, in assessment ing the adjusted for the year 2015 AD, calculated an estimated profit of 15% on the difference between foreign purchases with a value of (408824,128) Saudi riyals, and the company concluded a contract with the ... company For Electricity Production (... company), Commercial Registration No. (...) For the implementation and completion of all procurement, construction, commissioning, commissioning and other necessary works within the Kingdom of Saudi Arabia,.. As the owner of the contract to purchase materials, construction equipment and spare parts from its supplier residing outside the Kingdom, the Committee will note that the company as a contractor is responsible for clearing goods at the port of import, completing customs documents and transporting all materials, equipment and spare parts to the construction site, based on the above facts, we would like to clarify to the esteemed committee that the external procurement differences of (408824,128) Saudi riyals related to materials, construction equipment and caliber parts purchased on behalf of the ... company The Company would also like to inform the esteemed Committee that these purchases have not been recorded by the Company in its books of account (not owned by the Company but owned by the ... company) It was declared directly by a ... company In its books, the Company has imports with a value of SAR (3,244,294) which were duly recorded in the books and recorded in line (10402) of the amended tax return for the year 2015 AD. The esteemed committee will also agree that the company does not have access to the tax return of the ... company which is a top secret document. Accordingly, the Company is not in a position to provide proof that the purchases have been recorded by the ... company In its tax return, therefore, the Company requests the esteemed Committee to kindly direct the Authority to verify this matter

as it has access to the Company's tax return.... We attach the customs data against the total foreign purchases amounting to (412,068,422) Saudi riyals and the letter of confirmation of foreign purchases made by the ... company In its view, the Authority stated that the total purchases for 2015 AD according to the confirmation letter is only (63,504,378) US dollars/ (238,441,421) Saudi riyals, and the company does not agree with the above statement of the Authority and wishes to inform the esteemed committee that on page (1) of the confirmation letter on June 8, 2021, the company submitted the list of imports made on behalf of the ... company And I asked a ... company Confirmation that the value of the imported goods is (408,824,128) Saudi riyals, which the ... company confirm it. As the esteemed committee will note from the confirmation letter that the ... company It has confirmed that it has recorded a total of foreign purchases of (454,123,733) Saudi riyals (121,009,662 US dollars), which includes purchases cleared by the ... company On behalf of the ... company With a value of (400,824,1200) Saudi riyals. The confirmation (confirming an amount of SAR 454,123,733 which includes SAR 400,524,128) also provides details of the amount if recorded in 2015 AD and 2016 AD i.e. SAR (238,441,421) in 2015 and SAR (215,716,061) in 2016 AD (cleared by the company from customs in 2015 AD and received by the ... company In 2016 AD) respectively, in light of the above, the Honourable Committee will agree that the External Procurement has been properly matched in principle and amount as confirmed by the ... company Accordingly, the statement of the Authority and the First Circuit that no conformity has been submitted is incorrect and does not comply with the regulations in force in Saudi Arabia. The company would like to inform the esteemed committee that the external purchases according to the books of accounts of the ... company Customs records do not necessarily correspond to different grounds such as different timing of goods cleared by customs on a certain date and received by a ... company On a different date (as mentioned in its confirmation), the company would like to inform the esteemed committee that foreign purchases worth (215,716,061) Saudi riyals (57,524,283.05 USD) were cleared from customs in 2015 AD, but the goods were received by the ... company In the first three months of 2016 AD and was later registered by the ... company In 2016 AD. With regard to the Taxpayer's appeal regarding the clause (not allowing the deduction of social insurance expenses for 2015 AD), the Taxpayer stated that the company does not agree with the Authority's view, as the company has submitted the documents supporting its objection. In its revised assessment, the Authority did not allow the deduction of the social insurance expense of (139,192) Saudi riyals in its adjusted assessment without providing any basis. The company wishes to inform the esteemed committee that it is not aware of the basis on which the Authority relied to reach the above amount, which the Authority did not allow. Therefore, the company is pleased to attach the social insurance certificate and match the amount of social insurance with the company's tax return for the year 2015 AD. The esteemed committee will note from the above that the company has declared the amount of social insurance according to the salaries mentioned in the social insurance certificate and there was no difference. With regard to the Taxpayer's appeal regarding the clause (delay fines on the company's additional obligation for the year 2015 AD), the Taxpayer explained that the company has correctly complied with the income tax law and its executive regulations. The company wishes



to inform the esteemed committee that it has always paid the income tax due in accordance with the provisions of the income tax law and its executive regulations. Accordingly, since the company has always complied with its financial obligations in accordance with the provisions of the income tax law and its executive regulations, there is no justification for the authority to impose any delay fine on the additional income tax imposed, especially when this additional income tax was not accepted by the company and was objected to in the appeal. Accordingly, the Taxpayer demands that its appeal be accepted and the decision of the Adjudication Circuit on the clauses subject of its appeal be overturned.

on Thursday, 23/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video conferencing in accordance with the procedures for remote video litigation; based on the provisions of Article 15, Clause 1 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No. (25711) and dated: 08 /04 /1445 AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

#### Grounds:

upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request is accepted procedurally, as it was submitted by a person with standing, and within the statutory period prescribed for its conduct.

On the merits, and with regard to the Taxpayer's appeal on the clause (Foreign Procurement Differences for the year 2015 AD), where the Taxpayer's appeal lies in the appeal against the dismissal of the Adjudication Circuit's objection to the disputed clause, as it claims that it is importing on behalf of the company (...). Based on the above, the statement of imports issued by the Zakat, Tax and Customs Authority is a basic presumption from a third party and neutral to prove the validity of imports, and by looking at the case file, it becomes clear that the Authority's action is to amend the results of the Taxpayer's business due to differences in the value of imports listed in its tax return compared to imports according to the customs statement, where the Taxpayer argues that the differences have arisen in light of its imports made on behalf of a ... company, and by looking at the documents submitted in the case file represented by the agreement concluded between the Taxpayer and a ... company Which stated in its content that the Taxpayer bears the imports on behalf of the ... company, and as the Taxpayer submitted a letter from the ... company Which is confirmed by a ... company Receipt and use of equipment during the years 2015 AD and 2016 AD, and where it was found that the total amounts amounted to (454,123,733) riyals (121,099,662 US dollars). To verify the letter, the submitted list was referred to and a sample was taken from it and the sample was matched with the submitted invoices, in addition to the customs statement so that the registered sample

was matched with the customs invoice number (...) Within the statement submitted with the invoice on page (25) amounting to (112,693.79) US dollars, and the registered sample was matched with the customs invoice number (...) In the amount of (14,392,502.40) US dollars within the statement submitted with the invoice contained on page (29) in addition to the customs clearance contained in the same document, and from this it becomes clear that the Taxpayer's arguments are correct that it is importing on behalf of the ... company Where the ... company Certainly, and the matter with which the Circuit ends up accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit on this clause.

With regard to the Taxpayer's appeal regarding the clause (not allowing the deduction of social insurance expenses for the year 2015 AD), where the Taxpayer's appeal lies in the appeal against the dismissal of its objection to the disputed clause, as it claims to have submitted the supporting documents. based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, concerning the expenses that may be deducted to determine the taxable income as follows: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. (d) It is not of a capitalist nature. ", and based on paragraph No. (3) of Article (57) of the Income Tax Executive Regulations issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the foregoing, it becomes clear that the dispute concerns the non-allowance of deducting the difference in social insurance expenses stated in the declaration from what is stated in the social insurance certificate. Accordingly, the certificate issued by the General Organization for Social Insurance is considered one of the important and neutral documents used to verify the accuracy and fairness of salaries and wages charged to the accounts. After reviewing the case file and the defenses and documents it contained, it was found that the Taxpayer had declared total social insurance expenses according to a declaration in the amount of (1,195,929) for the Saudi side and the foreign side. Upon reference to the social insurance certificate, it was found that the total amount of social insurance expenses amounts to (1,194,752) riyals for both the Saudi side and the foreign side, where the difference between what is stated in the declaration and the certificate amounts to (1,177) riyals, which necessitates an addition to the adjusted net profit (regarding which the Taxpayer provided no grounds), and not the amount indicated by the Authority. The Authority failed to notice the error in classification according to the Taxpayer's declaration submitted to it, where what was included in the declaration for the Saudi side was the expense related to the foreign side. To avoid this erroneous treatment, the entire insurance expense

stated in the declaration was taken and matched against the social insurance certificate, which resulted in a difference of only (1,177) riyals as mentioned above. Accordingly, the Circuit concludes by partially accepting the Taxpayer's appeal and amending the decision of the Adjudication Circuit regarding this clause.

With regard to the Taxpayer's appeal regarding the clause (delay fines on the company's additional obligation for the year 2015 AD), and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these regulations, including cases that are contested, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on the foregoing, and since the Taxpayer did not submit its objection on this clause before the adjudication committee in the first place, which ends with the Circuit dismissing the Taxpayer's appeal on this clause.

with regard to the Taxpayer's appeal regarding the remaining clauses at issue in the case, the Circuit is not faulted for adopting the grounds for the decision under appeal without adding to them when it assesses that these grounds make it unnecessary to introduce anything new, because in supporting the decision with the content of these grounds, it is certain that it did not find any objections to the decision that merit a response beyond what is contained in these grounds as the issuing Circuit scrutinized the dispute and reached the conclusion it reached in its operative part, and as this Circuit did not observe any reason to appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject the Taxpayer's appeal and uphold the decision of the Adjudication Circuit with respect to the remaining clauses at issue in the case, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Acceptance of the appeal procedurally from the Taxpayer/ ... company, commercial register (...), unique number (...) Against the decision of the first circuit for adjudicating violations and disputes of income tax in



Jeddah Province with number (IZJ-2022-2604) issued in case number (I-2021-74886) related to the tax assessment for the year 2015AD.

2- On the merits:

- (a) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (customs duties for the year 2015 AD).
- (b) Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (foreign procurement differences for the year 2015 AD).
- (c) Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding an clause (revenues from an improperly traded joint venture to the tax base).
- (d) Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (not allowing the deduction of 60% of the share in the net loss of joint ventures).
- (E) Accepting the appeal of the partially Taxpayer and amending the decision of the Adjudication Circuit regarding the clause (not allowing the deduction of the social insurance expense for the year 2015 AD).
- (f) Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (not allowing the adjustment of the gains from the sale of fixed assets for the year 2015 AD).
- (G) To dismiss the Taxpayer's appeal regarding the clause (delay fines on the company's additional commitment for the year 2015 AD).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024- 192725

Case No. I-2023-192725

### Keywords

Income tax - Expenses Incurred to Generate Income -not approving any expenses or costs related to the tax activity - accepting the Authority's appeal

### Summary:

The Zakat, Tax and Customs Authority objected to the decision of the Second Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ISR-2023-152688), where its appeal lies on the clause (failure to approve any expenses or costs related to the tax activity for the year 2016 AD) in that it rejected all the expenses of the activity because the Taxpayer did not respond to the data request sent by the Authority and did not provide the supporting documentary evidence. Whereas, it has been proven to the Appeal Committee in accordance with the tax law that the calculation of the tax base is based on the Taxpayer's declaration and the Taxpayer is required to submit what supports that declaration so that the financial statements represent the main option supporting the calculation of the tax base and in order to be considered, they must be complete in terms of preparation, measurement, presentation and disclosure, which was not achieved in the financial statements of the Taxpayer as it was not clear that their elements are complete. Consequently, the authority's appeal is accepted, and the decision of the adjudication committee is canceled.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (23) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

## Facts:



the appeal filed on 25/04/2023 AD by the Zakat, Tax and Customs Authority (ZTA) against the decision of the Third Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (ISR-2023-152688) issued in Case No. (I-2022-152688) related to the tax assessment for the year 2016 AD, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

First: Acceptance of the lawsuit filed by the Plaintiff/ ... company, unique number (...), against the Defendant/Zakat, Tax and Customs Authority, procedurally.

Second: On the merits: Cancel the Defendant's action in relation to the provision of any tax assessment costs or expenses for the year 2016 AD, according to the grounds.

as this decision was not accepted by the appellant (Zakat, Tax and Customs Authority), it filed a list of appeals, which included the following:

The Authority objects to the decision of the Adjudication Circuit under appeal, where it claims that regarding the clause (non-approval of any expenses or costs related to the tax activity for the year 2016 AD), the Authority clarifies that it rejected the entire activity expenses in the amount of (15,159,462) riyals due to the Taxpayer's failure to respond to the data request sent by the Authority on 11/11/2021 AD and failure to provide documentary evidence supporting the following clauses: direct costs, purchases from abroad (imports) with attachment of customs clearance, rents, other expenses, and if the clause represents multiple invoices, it is required to provide a detailed statement of the clauses so that the sample can be selected and determined, provision of a copy of the social insurance certificate, analytical statement of direct and indirect salaries and wages with matching to what was declared in the declaration. The above requests include all activity expenses. The Authority reminded the Taxpayer through mail several times, and due to the Taxpayer's non-response and lack of cooperation for five months from the first demand, all expenses were rejected as being documentarily unsubstantiated expenses, and assessment was made based on available data. During the objection stage, the Taxpayer's declaration was reviewed and it was found that the expenses were included in a total amount of (15,159,462) riyals under the clause of other direct expenses (Table 3-A) with no details provided in the financial statements. Regarding the grounds cited by the Taxpayer in the objection memorandum, the Authority states firstly: On the procedural side, the technical problem referred to by the Taxpayer due to the failure of the company to receive information request notices is misplaced, as the Authority notified the data requestor through the mail and sent it to the mail registered with the Authority. Second: the merits aspect, which is the non-approval of any costs or expenses related to the activity for the year 2016 AD, where the Authority rejected all expenses due to their lack of supporting documentary evidence. The Taxpayer was requested to provide documentary proof on 11/11/2021 AD, and the Taxpayer was given an opportunity to submit data until the assessment date on

20/06/2022 AD. In response to the Taxpayer's memorandum that estimated accounting was conducted for the year 2016 AD, the Authority states that it did not assess the Taxpayer on an estimated basis, but rather assessed him in the regular manner according to the data based on his declaration. All expenses were rejected due to lack of proof, and revenues were not subjected to a profit percentage. Regarding the accounting for the year 2016 AD without applying the matching principle by deducting estimated expenses, the Authority states that it did not adopt the estimated method in assessing the Taxpayer, considering that the Taxpayer is assessed regularly and his accounts were not disregarded. Regarding the failure to review supporting documents for the company's costs and expenses, the Taxpayer stated that the company possesses all supporting documents that prove the accuracy of the information included in the declaration and financial statements. He provided a statement of expense clauses which is included in the objection memorandum, and he states that he provided samples for all clauses mentioned in the said statement. Upon reviewing the objection attachments, the mentioned attachment for expense samples was not provided. Accordingly, the Authority sent an email to the Taxpayer on 16/08/2022 AD requesting him to provide the data and samples as he stated in the objection memorandum. He was also asked about the grounds for not responding to the previous data request sent during the examination phase. The email was responded to and the mentioned samples were provided according to his objection. He stated that the reason for not responding to previous requests was because "the branch is a permanent establishment as a non-independent agent, so there is no actual presence of company personnel in the Kingdom, and the contact number was outside the Kingdom, with company personnel having no knowledge of the Arabic language or the Authority's procedures." Given the Taxpayer's response through the certified public accountant's office... and submitting some documents and samples for expenses. The scope of the examination has been expanded to verify the existence of regular accounting books and to verify that the samples submitted to them are a reference for accounting registration. Accordingly, on 29/08/2022 AD, the Taxpayer was requested to provide the following data: 1-The detailed trial balance for 2016 AD. 2-A ledger account at the cost of cement products in the amount of (8,727,027) riyals. 3-The account of the manager of the managers' salaries in the amount of (401,869) riyals. 4-The account of the professor of tax services in the amount of (62,370) riyals. With the identification of financial operations from the accounts of the master, for which samples have been submitted previously. The Taxpayer replied on 30/08/2022 AD and the following data were submitted in English: 1- Total trial balance. 2- Detailed payroll. 3- Calculating the cost of cement products. 4-A statement of account for tax services. 5- Calculating the managers' salaries. Accordingly, the total trial balance was matched with the financial statements, which is identical because it is a total balance that does not contain any details about the clauses. The calculation of cement products was matched with the submitted samples, and the Authority was unable to match their amount, as the statement and invoices were in the US dollar currency and it was unable to match the invoice samples with the submitted statement, and the total was transferred to the Saudi riyal only. The statement of account of the tax services and the submitted sample for the period ending on 31/12/2015 AD were reviewed, so the Authority was unable to



match them because they were not present in the 2016 AD statement of account, and the managers' salaries were calculated: It is evident from this that directors' salaries are charged every six months with a single entry at the end of the year. Due to the inability to match the data, communication was made with the certified public accountant's office and clarification was requested regarding the recording methods. He stated that he did not know and that he would communicate with the company in Britain and contact us, but no response was received until the date of 06/09/2022 AD. Based on the foregoing data, it is clear that there is no actual presence of the company's personnel in the Kingdom, which proves the absence of accounting books maintained within the Kingdom in Arabic. The Taxpayer maintains its books through computer from outside the Kingdom and does not have employees within the Kingdom through whom data can be obtained. The Authority was unable to trace and verify the matching of the submitted samples with the account statements. Therefore, the submitted data cannot be relied upon. Furthermore, the company did not comply with the controls for maintaining accounting books and records approved by Article Fifty-Six of the Executive Regulations of the Income Tax Law. Accordingly, and in accordance with the aforementioned grounds and regulatory grounds, the Taxpayer's objection was rejected because the submitted data does not reflect the reality of the company and the financial statements, and the Taxpayer's failure to provide documentary evidence for expenses that meet the conditions for permissible expense deduction contained in Article Nine, paragraph (1) of the Executive Regulations of the Income Tax Law. It added that the Circuit that issued the decision under appeal annulled the Authority's decision, reasoning that it is not reasonable for the Authority to take part of the financial statements represented by revenues without taking the expenses contained in the same statements. The Authority responds to this by stating that after reviewing the documents submitted in the case, it was found that they are the same data submitted during the objection stage, which consist of a collection of goods and services invoices in foreign currency distributed in folders with expense and cost designations, and do not include analytical ledger statements for expenses or summary statements that can be matched with the cost of sales contained in the financial statements. Additionally, the submitted invoices are not translated into local currency. Furthermore, when these invoices are translated and converted to local currency and detailed according to the folder names in which they were submitted, they cannot be compared with the expenses in the financial statements due to the absence of details in the financial statement notes. Regarding what the decision-issuing Circuit relied upon in annulling the Authority's decision - namely that it is not reasonable for the Authority to take part of the financial statements without the other part, which is the revenues - the Authority confirms that it acted in accordance with what was approved by the Executive Regulations of the Income Tax Law in paragraph (1) of its Article Five regarding the acceptance of expense deductions to determine taxable income, where the submitted data "as we indicated above" cannot be accepted as documentary evidence of the validity of cost of sales. Accordingly, the Authority confirms the correctness and soundness of its procedure and requests the reversal of the Adjudication Circuit's decision on the clauses under appeal for the aforementioned grounds.



on Thursday, 27/06/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via video conferencing in accordance with the procedures of remote video litigation; based on the provisions of clause no:(2) of Article Fifteen of the Rules of Work of the Committees for Adjudicating Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441 AH; after reviewing the appeal submitted by the parties to the case, and after examining the contents of the case file, and where the circuit found nothing to require the presence of the parties to the appeal, the circuit decided that the case has become ready for adjudication and issuing a decision on its subject, so the circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the appeal request is accepted procedurally, as it was submitted by a person with standing, and within the statutory period prescribed for its conduct.

On the merits, and where the appeal of the Authority regarding the clause (not to approve any expenses or costs related to the tax activity for the year 2016 AD), and where its appeal lies that it rejected all the expenses of the activity in the amount of (15,159,462) riyals due to the failure of the Taxpayer to respond to the request for data sent by the Authority on 11/11/2021 AD and the failure to provide supporting documentary evidence. Whereas Paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425 AH stipulates that: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. (d) It shall not be of a capitalistic nature." Whereas Article (23) of the Sharia Pleadings Law relating to interlocutory applications stipulates that: "The Arabic language is the official language of the Circuits, and the Circuit hears the statements of litigants, witnesses, and the like who are non-Arabic speakers through an interpreter, and provides a certified translation from an office licensed in Arabic for papers written in a foreign language." Article (58) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH related to expenses related to books and records stipulates that: "The Authority shall have the right to refuse to charge any expense if the Taxpayer fails without reasonable cause to submit the document related to the expense or the evidence supporting the validity of the claim." Paragraph (3) of Article (57) of the Income Tax Executive Regulations also stipulates that: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated

by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the foregoing, and since the dispute lies in the fact that the Authority rejected all the expenses of the activity because the Taxpayer did not submit the documents supporting the financial statements with a value of (15,159,462) riyals, and the Taxpayer is required to approve the deduction of the expenses related to the activity and to support what was mentioned in the adjudication decision, because it is a documentary supporting expenses, and the Taxpayer states that it did not receive any notices from the Authority requesting additional information, while the Authority paid that it notified the Taxpayer by e-mail on 11/11/2021 AD and gave him a deadline until 29/08/2022 AD, where the Taxpayer submitted copies of the correspondence that took place between him and the Authority with its objection list before the adjudication committee on 04/06/2023 AD, and after reviewing the submitted e-mail correspondence; it turns out that the Taxpayer responded to the Authority and submitted the required documents, and the Authority stated that after receiving the documents, it examined more widely within the statutory deadline given to the Taxpayer by the Authority On the merits: The Authority clarified that it did not disregard the Taxpayer's accounts and assess him on an estimated basis, but rather rejected the deduction of expenses as they were not supported by documentation. Accordingly, while the Authority matched the samples with the submitted statements, the dispute arises when amounts are converted to Saudi Riyals, showing differences resulting from currency conversion that do not match the approved financial statements, which assume that the amounts recorded therein are in Saudi Riyal currency. Some samples were not present in the submitted account statements, and some submitted samples were for accounts recorded with a single entry at the end of the year. The Authority verified the accounts through the certified public accountant, who in turn did not clarify to the Authority the methods of recording accounts and the details of accounting operations that took place during the year. In application of Article (23) of the Sharia Pleadings Law relating to incidental applications, which clarifies the obligation of Taxpayers to maintain accounting books and records in Arabic language, and through the submitted documents, it appears that the Taxpayer submitted documents in foreign language and non-Saudi currency. The Authority exercised its right to verify the validity of expenses contained in the submitted documents and financial statements in terms of their acceptance or rejection regarding its procedure of taking part of the financial statements (revenues) and omitting part (expenses) in application of Article (9) paragraph (1) of the Income Tax Law. Meanwhile, the Taxpayer did not provide a trial balance or general ledger extracted from the accounting system and matching the statements for tracking and matching the submitted invoices, where the Taxpayer mentioned that accounts are recorded through a local service provider through a local terminal unit, and the Taxpayer electronically provides all necessary data to the service provider. The Taxpayer did not provide any document regarding what was mentioned above. As stated in the tax law, the calculation of the tax base is based on the Taxpayer's declaration, and he is required to provide supporting evidence for that declaration, so that the financial statements represent the basic supporting option for calculating the tax base. For them to be relied upon,

they must be complete in terms of preparation, measurement, presentation, and disclosure, which was not achieved in the Taxpayer's financial statements, as it was not clear that their components were complete. This is not affected by the non-acceptance of any document that was not submitted to the Authority during the assessment procedure, as this is a statement that is inconsistent with the regulatory texts governing objections to decisions issued by administrative bodies. The Law of Pleadings before the Board of Grievances and its Executive Regulations did not stipulate as a condition for accepting a grievance the necessity of submitting supporting documents for the grievance before the administrative authority. Since the Authority's decision issued is a non-final decision that is subject to appeal before the adjudication committees and the appellate committee, and since the Authority's decision has not acquired final status, the Taxpayer has the right to submit documents that reflect the actual situation at the time of assessment in order to ensure fair performance of the obligation in accordance with reality, as long as the submitted documents have not been challenged for their validity by the Authority. Additionally, the submission of documents and papers by the Taxpayer are considered evidence and presumptions worthy of consideration. If he did not submit them to the Authority, the Authority may amend the declaration based on what is established before it, and this is not affected by the Taxpayer subsequently submitting proof of the correctness of his declaration as long as nothing has been raised by the Authority that affects the validity of those documents. Furthermore, regarding the previous Appellate Committee decision number (1751) for the year 1438 AH, which upheld the Authority's position of not accepting new documents, the result of this decision cannot be relied upon due to the possibility of its annulment by the Board of Grievances. Moreover, what is considered in this regard is what the current committee has adopted, considering that its decision is final and issued by a judicial committee, unlike the previous committees whose decisions the Board's jurisprudence has established as administrative. Accordingly, the Circuit concludes by accepting the Authority's appeal and annulling the decision of the Adjudication Circuit on this clause.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Accepting the appeal procedurally from the applicant Zakat, Tax and Customs Authority against the decision of the Second Circuit for adjudicating income tax violations and disputes in Riyadh, No. (ISR-2023-152688) issued in Case No. (I-2022-152688) regarding the tax assessment for the years 2016 AD and 2016 AD.

2- On the merits:

Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause ( not approving any expenses or costs related to tax activity for the year 2016 AD), in accordance with the grounds and justifications mentioned in this decision.



## Appellate Committee for Tax Violations and Disputes

### First Appellate Circuit for Income Tax Violations and Disputes

In Riyadh

Decision No. IR-2024-175312

Case No. I-2023-175312

#### Keywords

Income tax - Expenses Incurred to Generate Income -exclusion of IT and other recharged expenses - acceptance of the Authority's appeal

#### Summary:

The Zakat, Tax and Customs Authority objected to the decision of the Second Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ISR-2022-1928), where its appeal lies on the clause (excluding information technology expenses and other reloaded expenses), as it claims that it is an undiscountable expense. Whereas, it was proven to the Appeal Committee that the Taxpayer submitted the invoices and the support services agreement, but they are not translated into Arabic, in addition to the fact that it did not provide the mechanism for calculating these expenses. Consequently, the authority's appeal is accepted, and the decision of the adjudication committee is canceled.

#### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (10) of Article (10) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (a) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

#### Facts:

The submitted appeal was heard on: 04/02/2023 AD, from the Zakat, Tax and Customs Authority, on the decision of the Third Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh, No. (ISR-2022-1928) issued in Case No. (I-2021-75655) related to the tax assessment for 2015 AD, in the case filed by the

Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

- 1- Modify the Defendant's procedure regarding the royalty expense exclusion clause, according to the grounds.
- 2- Cancellation of the Defendant's action with regard to the exclusion of IT expenses and other recharged expenses in the amount of (13,645,826) riyals, according to what was stated in the grounds.
- 3- Proof of the end of the dispute regarding an incorrect income tax amount clause when making the assessment.
- 4- Modify the Defendant's procedure regarding the delay fine clause, according to the grounds.

Whereas this decision was not accepted by the appellant (Zakat, Tax and Customs Authority), it submitted an appeal regulation reviewed by the Circuit, where the appeal of the Authority lies on the clause (excluding IT expenses and other reloaded expenses), the Authority clarified that when assessment ing, it added reloaded expenses and other reloaded expenses - information technology to the net profit; as it is an expense charged from the head office related to common costs distributed to the branches, which is an undiscountable expense as stated in paragraph (a, b/10) of Article (10) of the Income Tax Executive Regulations, and upon objection, the Plaintiff submitted the two invoices submitted by a bank ..., where it is clear from the invoice that it is a redistribution of expenses issued by a bank ... - Head office in the United Arab Emirates to a bank branch... - Kingdom of Saudi Arabia -, where they are expenses determined by the distribution method on a discretionary basis, as the Plaintiff did not provide the method of calculation, and therefore the Plaintiff's objection was rejected based on paragraph (10) of Article (10) of the Executive Regulations of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH of Ministerial Decision No. (1535) dated 11/6/1425 AH, which reads: "10- Amounts paid to the main centers abroad by the branches operating in the Kingdom and wholly owned by it in exchange for the following: (a) A royalty, royalty, or commission. (b) Proceeds of loans or any other financial fees. C- Indirect administrative and public expenses determined by the distribution method on a discretionary basis. "As for what the Plaintiff referred to in its statement of claim, it is not legally valid as explained by the Authority above, and there is no significant aspect to what it addressed in its regulations. If the Authority excludes this expense, the withholding tax paid for these expenses must be deducted because it is not based on a statutory evidence that can be relied upon, as well as based on Article (63) of the Executive Regulations of the Income Tax Law, Paragraph (8), which stipulates: "Withholding tax shall be imposed according to the percentages specified in paragraph (1) of this article on the full amount paid to the non-resident regardless of any expense incurred to achieve this income, and regardless of the regularity of its acceptance or part of it as a deductible expense, even if the amounts paid are due to contracts concluded on a date prior to the entry into force of the law." The circuit issuing the appealed decision also canceled the authority's action on the pretext that

the Plaintiff submitted the concluded contract and the disputed invoices, and that it was found through it that these expenses are actual expenses and were not determined by the method of distribution on a discretionary basis. The authority responds that the circuit's decision was incorrect, considering that it was based on documents not deposited in the lawsuit file, and the authority did not have access to them, which is in direct violation of the text of Article (29) of the committees' work rules, which confirmed that: "It is not permissible to rely on the papers of one of the parties to the lawsuit or its memoranda without enabling the other party to view them.." In addition, the issuing Circuit of the decision ruled more than what the Plaintiff requested in its lawsuit, where the Plaintiff's request was to allow the deduction of the withholding tax paid for the expenses in the event that the authority excluded these expenses, while the circuit decided to cancel the authority's procedure to exclude the expenses in addition to determining the Plaintiff's entitlement to deduct the withholding tax paid for those expenses, and this decision is considered duplicative by accepting the expense and deducting the withholding tax from the income tax without submitting the supporting documents. It should also be noted that the operative part of the decision was contrary to paragraph (g) of Article (68) of the Income Tax Law. The authority confirms that if the deduction of expenses is accepted, the withholding tax is not deducted from the income tax due, as it turns out that the circuit's decision is not based on legal grounds, which makes it flawed and should be annulled. With regard to the Authority's appeal regarding the clause (delay fine), the Authority clarified that the delay fine was imposed on the unpaid tax differences on the regular date based on Article No. (77), paragraph (a) of the Income Tax Law, which stipulates: (In addition to the fines mentioned in Article Seventy-Six of this Law and in paragraph (b) of this Article , the Taxpayer shall pay a delay fine of one percent (1%) of the unpaid tax for every thirty days of delay, and this includes the delay in the payment of the tax required to be withheld and the accelerated payments calculated from the date of the tax due to the date of payment) ,as well as based on Article (68), paragraph (1/b) of the Executive Regulations of the Income Tax Law, which stipulates: (To be added to the fines mentioned in the previous Article (1%) of the unpaid tax for every thirty days of delay in the following cases, including what is stated in the paragraph: (b) Delay in the payment of the tax due under the assessment of the Authority), and accordingly adheres to

on Sunday, 21/04/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes met via videoconferencing in accordance with the procedures for remote videoconferencing; based on the provisions of Clause 2 of Article 15 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit did not find it necessary for the parties to the appeal to be present, the Circuit decided to close the pleadings and reserve the case for adjudication.

## Grounds:

upon reviewing the case documents and the appeal list submitted by the Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and with regard to the Authority's appeal on the clause (exclusion of IT expenses and other reloaded expenses), where the Authority's appeal lies in the appeal against the acceptance of the adjudicator's objection to the disputed clause, as it claims that it is an undiscountable expense. Based on paragraph (10) of Article (10) of the Executive Regulations of the Income Tax Law relating to expenses that may not be deducted, which stipulates the following: "Amounts paid to the main centers abroad by branches operating in the Kingdom and wholly owned by them in exchange for the following: (a) A royalty, royalty, or commission. (b) Proceeds of loans or any other financial fees. (c) Indirect administrative and general expenses determined by the distribution method on a discretionary basis." Based on paragraph (f) of Article (68) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH, which stipulates that "if the amount referred to in this article is paid to a non-resident who practices work in the Kingdom through a permanent establishment, and that this amount paid to him is directly related to the work practiced by the permanent establishment, this amount shall be calculated in determining the tax base for a non-resident ", and based on paragraph (g) of Article (68) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH, which stipulates the following: "If the tax is withheld from an amount paid to a Taxpayer that has been calculated in its tax base, the withholding tax shall be deducted from the tax due from the Taxpayer for the tax base." Based on the above, and since it was found that the Authority's appeal lies in the cancellation of the Circuit's procedure in calculating expenses among the undiscountable expenses, the Authority states that it has added reloaded expenses and other reloaded expenses - information technology to the net profit as they are expenses charged by the head office related to common costs distributed to the branches, which is an undiscountable expense. After the Authority's review of the submitted invoices, it was found that they are considered expenses determined by the distribution method on a discretionary basis, as the Taxpayer did not provide the method of calculation, while the Taxpayer stated that they are actual and necessary expenses incurred to achieve the taxable income and duly supported by invoices and other supporting documents, as the Taxpayer submitted a copy of the invoices supporting those services and the support services agreement of the head office that covers the reloaded expenses. Accordingly, after reviewing the case file and its defenses and documents showing

with regard to the Authority's and the Authority's appeal on the (delay fine) clause, and based on the text of paragraph (a) of Article 77 of the Income Tax Law promulgated by Royal Decree No. M/1 dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in



paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." Based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law, which states: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these regulations, including cases that are contested, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on the foregoing, and by reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the end date of the deadline for submitting the declaration to the date of payment of the tax due arising under the application of the provisions of the law and the amendments made by the Defendant, which shows the validity of imposing the delay fine on the clauses for which the appeal was accepted from the date of the tax due by law, and canceling the delay fine in the clauses for which the appeal was rejected due to the loss of the original taxation, which ends with the Circuit partially accepting the Authority's appeal and amending the decision of the circuit of Classification on this clause.

Regarding the Authority's appeal regarding the clause (incorrect income tax amount when making the assessment), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the case is set, the content of the case and the answer must be monitored before the agreement is recorded, taking into account that the origin of the case is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or Circuit, provided that the merits of the case or some of it is among those agreed upon." Based on the foregoing, and where this Circuit has proven the Authority's request to leave the appeal as stated in the letter issued by the Authority in the supplementary memorandum, which includes the following: "The Authority wishes to inform the Honorable Circuit that it has left its appeal with regard to the above clause specifically and the procedures resulting from its appeal for this clause as per the terms of reference of the decision of the Disposition Circuit..." therefore, the Circuit shall accept the abandonment of the litigation.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:





### Decision:

1- Acceptance of the appeal procedurally from the Zakat, Tax, and Customs Authority against the decision of the third circuit regarding violations and disputes of income tax in Riyadh numbered (ISR-2022-1928) issued in case number (I-2021-75655) related to the tax assessment for the year 2015AD.

2- On the merits:

(a) Accepting the appeal of the authority and canceling the decision of the Adjudication Circuit regarding the clause (excluding IT expenses and other reloaded expenses).

(b) Accepting the abandonment of the litigation in relation to the Authority's appeal on the clause (incorrect income tax amount upon making the assessment).

(c) Accepting the Authority's appeal in part and amending the decision of the Adjudication Circuit with regard to the delay fine clause.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024- 191599

Case No. I-2023-191599

### Keywords

Income tax - Expenses Incurred to Generate Income -amounts paid on behalf of sister companies -  
accepting the Taxpayer's appeal

### Summary:

The Taxpayer's objection to the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-6918), where its appeal against the clause (amounts paid on behalf of sister companies for the years 2016 AD and 2017 AD) lies in its submission of all legal documents supporting the clause. Whereas, the Appeal Committee established that the Taxpayer attached with its appeal the movement of the accounts of related parties and a sample of journal entries extracted from the accounting system in support of the disputed clause with (20 entries), and it is clear from these entries that they did not affect the net profit, but represent transactions between related companies that are declared in accordance with accounting standards and do not represent expenses charged to the company's accounts. This means; accepting the Taxpayer's appeal and canceling the decision of the adjudicating circuit.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (12) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:

the appeal filed on 06/04/2023 AD, from/... Resident ID number (...) In its capacity as a legal representative (General Manager) of the appellant company under the Commercial Register, and from/the Zakat, Tax and Customs Authority, on the decision of the Third Circuit to adjudicate income tax violations and disputes in

the city of Riyadh No. (IFR-2022-6918) issued in Case No. (I-2021-86502) related to the tax assessment for the years 2016 AD and 2017 AD, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

First: Acceptance of the Plaintiff's objection/ ... company , Commercial Register No. (...) on the decision of the Defendant/Zakat, Tax and Customs Authority in terms of procedurality.

ii: On the merits: as follows:

1-Cancellation of the Defendant's decision in the clause of the cost of sales loaded from sister companies for the years 2016 AD and 2017 AD.

2- Rejection of the Plaintiff's objection regarding the amounts paid on behalf of sister companies for the years 2016 AD and 2017 AD.

3- Rejection of the Plaintiff's objection to the difference in salaries and wages for the years 2016 AD and 2017 AD.

4- Rejection of the Plaintiff's objection in the clause of social insurance teams for the years 2016 AD and 2017 AD.

5-Regarding the Company's objection to the clause of the cost of servers for 2017 AD:

(a) Cancellation of the Defendant's decision regarding salaries and wages for temporary employees (temporary workers) in the amount of 1,750,698.39 Saudi riyals.

(b) Cancel the Defendant's decision regarding the costs of hosting websites on the Internet in the amount of 131,644.00 Saudi riyals.

6-Cancel the Defendant's decision in the clause of purchases of programs for the purpose of resale from related parties for the year 2016 AD.

7-Amending the Defendant's decision in the delay fine clause.

Whereas this decision was not accepted by the Taxpayer (a ... company), it submitted an appeal statement reviewed by the Circuit, where the Taxpayer's appeal lies on the clause (amounts paid on behalf of sister companies for the years 2016 AD and 2017 AD), the Taxpayer explains that it has submitted all the legal documents supporting the clause, namely: The supporting entries for the clause, trial balance, email sent by the Taxpayer, and the email through which the Taxpayer submitted analytical data for all ledger accounts. Based on this, it becomes clear that the Taxpayer submitted data and documentary evidence confirming that those amounts were not charged to the income statement but rather are inter-company transactions. The decision-issuing committee acknowledged the Taxpayer's submission of necessary evidence for the clause. Despite this, the Circuit adopted the Authority's viewpoint, as the Circuit mentioned the inevitability of having actual expenses related to the activity as long as accrued expenses were charged to liabilities

(balance sheet accounts), claiming that this is customary, which is an incorrect assumption and the Taxpayer does not know on what basis the committee and the Authority built that claim. Regarding the Circuit's claim, which matches the Authority's claim that the company's financial statements indicated that the cost of sales note is linked to the related parties note where both carry note number (5), in reality the Taxpayer does not know what the Circuit's viewpoint is in this regard, as the referenced note number (5) contains material transactions with related parties including payables to related parties as well. The Taxpayer submitted an analytical statement for all cost of sales accounts for the years 2016 AD-201 AD7 to the Authority during the Taxpayer's objection discussion stage via email. The Taxpayer also indicated that the Taxpayer's appeal is supported by the decision of the First Appellate Circuit for Tax Violations and Disputes number (IR-2022-2291), which came in support of the decision of the Third Adjudication Circuit number (ITR-2021-734). In addition to the foregoing, the Taxpayer adheres to all defenses and grounds contained in the main objection letter and the Taxpayer's response letter to the Authority's rejoinder. he requests that its appeal be accepted and the decision of the Adjudication Circuit be reversed. this decision was not acceptable to the appellant (Zakat, Tax and Customs Authority), so it filed a list of appeals, which was reviewed by the Circuit, in which the Authority requested that its appeal be accepted and the decision of the Adjudication Circuit be reversed.

on Monday, 20/05/2024, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No. (25711) and dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and with regard to the Taxpayer's appeal on the clause (amounts paid on behalf of sister companies for the years 2016 AD and 2017 AD), and where the Taxpayer's appeal lies in submitting all the legal documents supporting the clause, and based on Article (12) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH related to expenses related to income generation, which include "all ordinary and necessary expenses to achieve taxable income, whether paid or due, and incurred during the tax year are the expenses of the deduction award when calculating the tax base, with the exception of

any expenses of a capital nature, and other expenses that are not deductible under Article Thirteen of this Law, and other provisions in this chapter." . Based on paragraph (1) of Article (9) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Resolution No. (1535) dated 11/06/1425AH, which includes: "The expenses that may be deducted to determine the taxable income are: 1- All ordinary and necessary expenses incurred to achieve taxable income, whether paid or accrued, provided that the following controls are met: A- It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. B- It must be related to achieving taxable income. c. It must be related to the tax year. (d) It is not of a capitalist nature". Based on the above, and by reviewing the case file and the defenses and documents it contained, it was found that the Taxpayer attached with its appeal the movement of the accounts of the relevant parties and a sample of the daily entries extracted from the accounting system in support of the disputed clause (20 entries), and it is clear from these restrictions that they did not affect the net profit, but represent transactions between related companies that are declared in accordance with accounting standards and do not represent expenses charged to the company's accounts, which ends with the circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding this clause.

with regard to the Taxpayer's and the Authority's appeal on the remaining clauses, the Circuit has no fault in adopting the grounds for the decision under appeal without adding to them when it assesses that these grounds make it unnecessary to introduce anything new, because in supporting them with the content of these grounds, it is certain that it did not find any objections to the decision that merit a response beyond what is contained in these grounds as the issuing Circuit scrutinized the dispute and reached the conclusion it reached in its operative part, and as this Circuit did not observe any reason to appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject the appeal of the Taxpayer and the Authority and uphold the decision of the Adjudication Circuit in its conclusion on the remaining clauses, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Acceptance of the appeal procedurally, submitted by / ... Company commercial Register No. (...), unique number (...), and the Zakat, Tax and Customs Authority, against the decision of the Third Circuit for the adjudication of income tax violations and disputes in Riyadh (IFR-2022-6918) issued in Case No. (I-2021-86502) related to the 2016 AD and 2017AD tax assessment.

2- On the merits:

A- Rejecting the Authority's appeal and endorsing the decision of the Adjudication Circuit regarding the clause (cost of sales loaded from sister companies for the years 2016 AD and 2017 AD).



B- Rejecting the Authority's appeal and supporting the decision of the Adjudication Circuit regarding the clause (salaries and wages of employees for the year 2017 AD).

C- Rejection of the Authority's appeal and support of the decision of the Adjudication Circuit regarding the clause (Costs of hosting websites over the Internet for the year 2017 AD).

D- Rejecting the Authority's appeal and endorsing the decision of the Adjudication Circuit regarding the clause (purchases of programs for the purpose of resale from related parties for the year 2016 AD).

E- Rejecting the Authority's appeal and upholding the decision of the Adjudication Circuit with regard to the delay fine clause.

F- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (amounts paid on behalf of sister companies for the years 2016 AD and 2017 AD).

G- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (adding a salary difference for the adjusted profit for 2016 AD and 2017 AD).

H- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (social insurance teams for 2016 AD and 2017 AD).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-171717

Case No. W-2023-171717

### Keywords

Income Tax - Expenses Incurred to Generate Income – Amounts Recorded as Accrued Expenses -  
Acceptance of the Authority's Appeal - Acceptance of the Taxpayer's Appeal

### Summary:

The Taxpayer and the Zakat, Tax and Customs Authority objected to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2526), where the Authority's appeal lies on the clause (amounts paid in advance for the year 2015 AD), as it claims that the Taxpayer did not submit the documents supporting the payment. The Taxpayer's appeal on the clause (amounts recorded as expenses due for the years from 2014 AD to 2017 AD) lies in the rejection of the Adjudication Circuit on the clause in dispute, as it claims to pay the withholding tax for all amounts actually paid to the beneficiaries and that it paid the withholding tax to the Authority for all amounts actually paid to the beneficiaries during the periods in appeal and subsequent periods (when the incident establishing the tax, which is the actual payment), with a total amount greater than the amounts of the assessment in dispute. Whereas, the Appeal Committee established in the Authority's appeal the validity of what it indicated that the payment documents are not related to the periods in dispute, and that the Taxpayer did not submit the documents supporting the payment and related to the periods in dispute, and with regard to the Taxpayer's appeal that the documents it submitted are for the entire period in dispute, which the Authority has not challenged their validity. Consequently, the authority's appeal is accepted, and the Taxpayer's appeal is accepted.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (5) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Article (70) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)



- Paragraph (a) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Article (63) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (3) of Article (67) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

#### Facts:



the appeal filed on 26/01/2023 AD, from/... Resident ID number (...) In its capacity as the legal representative of the appellant company under its Memorandum of Association and the Zakat, Tax and Customs Authority, the First Circuit's decision to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2526) issued in Case No. (W-2021-81540) related to the assessment of withholding tax for the years 2014 AD to 2017 AD, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

1. Rejection of the Plaintiff's objection regarding the statute of limitations for 2014 AD and 2015 AD.
2. Cancel the Defendant's decision regarding the clause of prepaid amounts for 2014 AD and 2015 AD.
3. Rejection of the Plaintiff's objection regarding the clause of amounts recorded as expenses due for the years from 2014 AD to 2017 AD.
4. Cancel the Defendant's decision regarding the clause of withholding tax as related parties for the years 2014 AD to 2017 AD.
5. Reject the Plaintiff's objection regarding the clause of refund of the due tax.
6. Amendment of the Defendant's procedure regarding the delay fine clause.

Whereas this decision was not accepted by the Taxpayer (... company), it submitted an appeal statement that was reviewed by the Circuit, where the Taxpayer's appeal lies on the clause (amounts recorded as expenses due for the years from 2014 AD to 2017 AD), the Taxpayer explained that the adjudication committee based its ruling on rejecting the company's objection to its claim that the company did not provide documentary support for the clause, while the company confirmed through the response memorandum to the Authority's view that it paid the withholding tax to the Authority for all amounts



actually paid to the beneficiaries subject of the clause during the periods subject of appeal and subsequent periods (when the event establishing the tax, which is the actual payment, was achieved) with a total amount greater than the amounts of the assessment subject of the dispute, as follows: A- With regard to transactions with the company(...) Which was subjected by the Authority to withholding tax for the years from 2014 AD to 2017 AD, the total transactions recorded as an expense in the company's books in the period from 2014 AD to 2018 AD amounted to (227,843,788) Saudi riyals, while the amounts paid to the supplier, which were subjected by the company to withholding tax upon the realization of the taxable event, which is the actual payment and not the entitlement according to the Authority's procedure, amounted to (293,880,302.13) Saudi riyals, and therefore it appears that the company withheld the tax on the amounts paid to the company (...) but at different intervals. B- With regard to transactions with the company (...) Which the Authority subjected to withholding tax for the year 2016 AD, the total transactions recorded as expenses in the company's books during the period from 2016 to 2017AD amounted to (3,505,492) Saudi riyals, while the amounts paid to the supplier on which the company applied withholding tax when the tax-generating event occurred - which is the actual payment event and not the accrual entry according to the Authority's procedure - amounted to (4,278,247.79) Saudi riyals. C- With regard to transactions with the company (...) Which the Authority subjected to withholding tax for the years 2014 AD and 2015 AD, the total transactions recorded as expenses in the company's books during the period from 2014 AD to 2017 AD amounted to (5,233,341.00) Saudi riyals, while the amounts paid to the supplier on which the company applied withholding tax when the tax-generating event occurred - which is the actual payment event and not the accrual entry according to the Authority's procedure - amounted to (5,370,706.00) Saudi riyals. D- With regard to transactions with the company (...) Which was subjected by the Authority to withholding tax for the years 2016 AD and 2017 AD, the total beneficial transactions as an expense in the company's books in the period from 2016 AD to 2018 AD amounted to (2,193,923,00) Saudi riyals, while the amounts paid to the supplier, which were subjected by the company to withholding tax when the tax-creating event occurred, which is the actual payment and not the due entry in accordance with the Authority's procedure, amounted to (1,957,216,67) Saudi riyals. E- With regard to the rest of the transactions that the Authority subjected to withholding tax for the years from 2014 AD to 2017 AD, the company submitted monthly withholding forms in addition to payment receipts that support the payment of those amounts during the subsequent periods when the event establishing the tax, which is the actual payment, is realized. With regard to the Taxpayer's appeal on the clause (delay fine), the Taxpayer explained that the adjudication committee, according to its decision under appeal, supported the Authority's point of view in imposing delay fines on the withholding tax differences for the years from 2014 AD to 2017 AD. Accordingly, the company appeals the decision of the adjudication committee as follows: The delay fine has arisen due to a real and clear difference of views between the Authority and the Company. The objection committees have ruled in many objections not to impose a delay fine when there is a real difference in views between the Authority and the Taxpayer. Therefore, the Taxpayer demands acceptance of his appeal and reversal of the



adjudication circuit's decision on the clauses subject to his appeal. Since this decision was not accepted by the Authority, it submitted an appeal brief which the circuit reviewed. The Authority's appeal concerns the clause (amounts paid in advance for the year 2015 AD). The Authority informed the honorable committee that the Plaintiff did not object to the clause during the examination and audit phase after receiving the preliminary assessment and raised it during the objection phase. Accordingly, the Authority held a hearing session with the Plaintiff on 25/10/2021 AD, and therefore the Authority wishes to summarize its response to the clause as follows: For the month of August 2015 AD: After studying and reviewing the documents submitted by the Plaintiff, it was found that the attached repayments from the Plaintiff, which it stated were related to the declaration of August 2015 AD, it was clear that it paid them in 2016 AD, and it was also found to the Authority after reviewing the Plaintiff's statement of account for August 2015 AD that there were no repayments for the period, and with regard to the month of July 2014 AD: After reviewing the documents submitted by the Plaintiff, which it indicated that payment was made in the December 2015 AD declaration, it was found that payment was made in the April 2015 AD declaration. Accordingly, it is found that the periods for which the Plaintiff reported that it paid the withholding tax do not match the amounts of the assessment and do not match the documents supporting the payment. The Plaintiff did not provide a detailed statement of the expenses due with the non-resident parties and the extent of its supply of withholding tax, as paragraph (3) of Article (57) of the Executive Regulations of the Income Tax Law stipulates that: "3-The burden of proving the validity of the revenues, expenses and any other data mentioned in the Taxpayer's declaration shall fall on the Taxpayer. In the event that the Taxpayer is unable to prove the validity of what is mentioned in its declaration, the Circuit may, in addition to applying any other statutory sanctions, not allow the expenditure that is not proven to be true by the Taxpayer or make a discretionary assessment according to the point of view of the Circuit in the light of the circumstances and facts related to the case and the information available to the Circuit.", As for the grounds of the Circuit, the Authority answers that it is incorrect, and therefore the Authority adheres to its procedure and safety. regarding the Authority's appeal regarding the delay fine clause, the Authority clarifies that the delay fine was imposed on tax differences not paid within the statutory deadline based on paragraph (a) of Article 77 of the Income Tax Law, which stipulates that: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes the delay in paying the tax required for withholding and accelerated payments and is calculated from the date the tax is due to the date of payment", as well as based on paragraph (1/b) of Article 68 of the Executive Regulations of the Income Tax Law, which states: "In addition to the fines mentioned in the previous article, (1%) of the unpaid tax shall be added for every thirty days of delay in the following cases, including what is stated in the paragraph: - b- Delay in paying the tax due under the assessment ing of the interest." Whereas the fine is consequential and due to the Authority's appeal on the above clauses, it adheres to the validity of its procedure in imposing a delay

fine on the unpaid tax differences and demands the acceptance of its appeal and the reversal of the decision of the Adjudication Circuit on the clauses subject to its appeal.

on Wednesday, on: 08/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are written in the minutes, via video communication in accordance with the procedures of remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No: (25711) and dated: 08 /04 /1445 AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, with regard to the Authority's appeal on the clause (Advance payments for 2015 AD), where the Authority's appeal lies in the appeal on the acceptance of the adjudicator's objection to the disputed clause, as it claims that the Taxpayer did not submit the documents supporting the payment. based on paragraph (3) of Article (57) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425 AH, which stipulates the following: "3- In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the foregoing, and with reference to the documents submitted, the validity of what the Authority indicated that the payment documents are not related to the periods in dispute, and therefore since the Taxpayer did not submit the documents supporting the payment and related to the periods in dispute, which leads the Circuit to accept the Authority's appeal and cancel the decision of the Adjudication Circuit on this clause.

With regard to the Taxpayer's appeal regarding the clause (the amounts recorded as expenses due for the years from 2014 AD to 2017 AD), where the Taxpayer's appeal lies in the appeal against the dismissal of its objection on the clause in dispute, as it claims to pay withholding tax on all amounts actually paid to the beneficiaries. Based on the above, it turns out that the Taxpayer's appeal is that it paid the withholding tax to the Authority for all the amounts actually paid to the beneficiaries during the periods subject to appeal

and subsequent periods (when the Taxpayer's actual payment is realized) with total amounts greater than the amounts of the assessment in question, while the Authority indicated that the Taxpayer's objection was rejected and a withholding tax was imposed on him, due to the failure to submit the master account through which the Authority can verify the amounts paid and the amounts due. Therefore, the lesson in imposing withholding tax on the Taxpayers is the actual payment, which the Taxpayer in the years in question proved by submitting both "a statement of the amounts paid for the years from 2014 AD to 2018 AD according to the company's monthly withholding forms - monthly withholding forms - the relevant payment receipts", and by reviewing the documents submitted, it was found that they are for the entire period in question, which

Regarding the appeal of the two parties regarding the clause (delay fine), based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these regulations, including cases that are contested, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." based on the above, and with reference to the case file and the defenses and documents it contains, and since the delay fine is calculated from the date of expiration of the deadline for filing the return to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the dispute between the two parties is based on a fundamental difference, and did not arise from a significant difference in the interpretation of the statutory texts therefore, the Authority's decision to impose the delay fine from the due date on the clauses where the Taxpayer's objection was rejected and the delay fine on the clauses where the Authority's decision was canceled due to the loss of the original imposition of the tax is correct, which leads the Circuit to modify the decision of the Adjudication Circuit on this clause.

With regard to the Authority's appeal regarding the clause (amounts paid in advance for the year 2014), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in



acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If an agreement is reached before the case is settled, it is necessary to record the content of the case and the response before documenting the agreement, taking into consideration that the original case must fall within the jurisdiction of the circuit, even if the content of the agreement falls within the jurisdiction of another court or circuit, provided that the subject matter of the case or part of it is among what has been agreed upon." Based on the foregoing, and whereas it has been established to this circuit that the Authority has requested to abandon the appeal according to what was stated in the letter issued by it in the supplementary memorandum, which contained: "The Authority informs the honorable circuit that it abandons its appeal regarding the above-mentioned clause specifically (amounts paid in advance for the year 2014 AD) and the procedures that resulted from the Authority's appeal, in accordance with what the adjudication circuit's decision concluded in its reasoning..." therefore, the Circuit shall accept the abandonment of the litigation.

Regarding the Authority's appeal regarding the clause (Withholding Tax as Associated Entities for the years 2014 AD to 2017 AD), Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If an agreement is reached before the case is settled, it is necessary to record the content of the case and the response before documenting the agreement, taking into consideration that the original case must fall within the jurisdiction of the circuit, even if the content of the agreement falls within the jurisdiction of another court or circuit, provided that the subject matter of the case or part of it is among what has been agreed upon." Based on the foregoing, and whereas it has been established to this circuit that the Authority has requested to abandon the appeal according to what was stated in the letter issued by it in the supplementary memorandum, which contained: "The Authority informs the honorable circuit that it abandons its appeal regarding the above-mentioned clause specifically (withholding tax as related entities) and the procedures that resulted from the Authority's appeal, in accordance with what the adjudication circuit's decision concluded in its reasoning..." therefore, the Circuit shall accept the abandonment of the litigation.

with regard to the Taxpayer's appeal on the remaining clauses in the case, the Circuit is not to be faulted for adopting the grounds for the decision under appeal without adding to them when it assesses that these grounds make it unnecessary to introduce anything new, because in upholding the decision with what these grounds contain, it is certain that the Circuit did not find any objections to the decision that merit a response beyond what was included in these grounds, and since this is the case and it is proven that the decision

under appeal regarding the disputed clauses was consistent with the valid grounds on which it was based and sufficient to carry its judgment since the issuing Circuit scrutinized the dispute and came to the conclusion it reached in its operative part, and since this Circuit did not notice anything that warrants censure or comment on it in light of the arguments raised before it, this Circuit concludes to reject the Taxpayer's appeal and uphold the decision of the Adjudication Circuit in its conclusion on the remaining clauses in the case, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

First: Accepting the appeal procedurally from the Taxpayer / ... company (Business Register...) Unique number (...). the appeal filed by the Zakat, Tax and Customs Authority against the decision of the First Circuit for the Resolution of Income Tax Violations and Disputes in Dammam, No. (IZD-2022-2526) issued in Case No. (W-2021-81540) related to the tax assessment for the years 2014 AD to 2017AD.

Second: On the merits:

1- With regard to the Authority's appeal against the clause (advance payments for the year):

(A) Accepting the abandonment of the litigation in connection with the Authority's appeal on the clause (Amounts prepaid for the year 2014 AD).

(B) Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause (amounts prepaid for the year 2015 AD).

2- Accepting the abandonment of the litigation in relation to the Authority's appeal on the clause (withholding tax as related parties for the years from 2014 AD to 2017 AD).

3- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (Limitation for 2014 AD and 2015 AD).

4- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (amounts recorded as expenses due for the years from 2014 AD to 2017 AD).

5- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (tax refund due to it (paid on account)).

6- Amending the decision of the Adjudication Circuit regarding the clause (delay fine).

This decision is considered final according to the provisions of Articles 47 and 48 of the rules of operation of the committees for adjudicating tax violations and disputes.



## Carried Forward Losses



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-167908

Case No. I-2023-167908

### Keywords

Income Tax - carried forward losses - Acceptance of the Authority's appeal -Acceptance of the partially  
Taxpayer's appeal

### Summary:

The Taxpayer and the Zakat, Tax and Customs Authority objected to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2398), where the authority's appeal on the clause (re-entry of the audited financial statements for the years preceding 2015 AD) lies in the Taxpayer stating that when preparing the financial statements for 2016, it noticed inadvertent errors related to the years preceding 2014 AD and 2015 AD, and in order to correct those errors, it made the required adjustments to the revenues and costs for the mentioned years. In the clause (losses carried forward), the authority assessment ed the Taxpayer for the year 2015 AD, based on the inspection report, as it became clear that there are no losses rounded from the years preceding 2015 AD. The Taxpayer's appeal on the clause (delay fine) is intended to impose a delay fine in the event of late payment of the due tax that has become final as a result of the Taxpayer accepting the assessment or completing the objection and appeal procedures. Whereas, it has been proven to the Appeal Committee regarding the clause (Re-entry of the audited financial statements for previous years) that the Authority has requested the Taxpayer to submit the supporting documents for the amendments in revenues/ costs, and the daily entries to prove these amendments, but the Taxpayer only submitted a clarification without providing the accounting treatment, and in the clause (losses carried forward) that there are no losses from the years preceding 2015 AD, and since the Taxpayer claims to take the accumulated stage loss in the financial statements based on the report of the chartered accountant, and this is contrary to what is stipulated in the tax regulations. Consequently, the Authority's appeal is accepted, and the Taxpayer's appeal is partially accepted.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)





- Article (12) of [The Income Tax Law issued by Royal Decree No. \(M/1\) dated 15/01/1425AH.](#)
- Article (70) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)
- Paragraph (a) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (11) of Article (10) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:



The appeal submitted on 05/01/2023 AD by/ (...), National ID No. (...), in its capacity as an agent of the appellant company under the submitted agency, and the appeal submitted on 10/01/2023 AD by/Zakat, Tax and Customs Authority, against the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2398) issued in Case No. (I-2020-58695) related to the tax assessment for the years from 2015 AD to 2017 AD, was considered in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

1- Cancel the Defendant's decision regarding the re-inclusion of the audited financial statements for the years prior to 2015 AD.

2- Cancellation of the Defendant's decision regarding the clause of external procurement differences for the years 2015 AD and 2017 AD.

3- Rejection of the Plaintiff's objection regarding the clause of realized losses in the exchange rate of foreign currency for the years 2015 AD and 2017 AD.

4-With regard to the clause of losses carried forward:

(a) Amending the Defendant's decision of 2015 AD.

B- Rejection of the Plaintiff's objection for the year 2017 AD.

5- Cancel the Defendant's decision regarding the clause of accelerated tax payments for 2017 AD.

6- Amending the Defendant's decision regarding the delay fine clause.

since this decision was not accepted by the parties, each of them filed a list of appeals, which included the following:

With regard to the Taxpayer's appeal against the decision of the Adjudication Circuit, its appeal regarding the clause (delay fine) is that it does not agree with the Authority's procedure to impose a delay fine. The

Taxpayer relies on Article (71), paragraph (2) of the Executive Regulations of the Income Tax Law, and since the purpose of the aforementioned regulations is to impose a delay fine in the event of delay in the payment of the due tax, which has become final as a result of the Taxpayer's acceptance of the assessment or the completion of the objection and appeal procedures, and accordingly the delay fine is imposed from the date on which the tax obligation became finally due based on the tax regulations. The Taxpayer also relies on the decisions of the Appeal Committee No. (1333) for the year 1434AH, No. (1355) for the year 1435AH and No. (1497) for the year 1436 AH. The Taxpayer also objects to the clause (realized losses in the exchange rate of foreign currency) and the clause (losses carried forward for the year 2017 AD), and therefore the Taxpayer requests the reversal of the decision of the Adjudication Circuit in the clauses subject to appeal for the above grounds.

With regard to the Authority's appeal against the decision of the Adjudication Circuit, its appeal may be with regard to the clause (Re-entry of the audited financial statements for the years preceding 2015 AD) that the Taxpayer states that when preparing the financial statements for 2016, it noticed inadvertent errors related to the years preceding 2014 AD and 2015 AD. In order to correct those errors, it made the required adjustments to the revenues and costs for the aforementioned years. When examining the objection and reviewing note (12) to the financial statements for 2015 AD, it became clear that the clause of prior-year adjustments (representing service fees charged by one of the related parties, the ... company (affiliated entity) pertaining to the financial year ended December 31, 2014 AD, which was not recorded in the accounting records at the time and was recorded in the current year as prior years' adjustments, noting that the fees charged to the branch are in line with the services agreement signed on 19/04/2014 AD between the two parties). Therefore, the Taxpayer's objection was rejected based on Article (Tenth) paragraph (11) of the Executive Regulations of the Income Tax Law, in addition to Article (12) of the Income Tax Law, as well as based on Article (9) paragraph (1) of the Executive Regulations of the Income Tax Law. As for what was stated in the Circuit's reasoning, the Authority responds that it is incorrect and contrary to regulatory requirements, and the Authority maintains the correctness and legality of its procedure. The Circuit that issued the decision canceled the Authority's decision, reasoning that it did not appear to it that the Authority had requested specific documents to verify the impropriety of conducting adjustments and corrections for errors that were recorded accountingly. The Authority responds that during the examination phase, it demanded the Taxpayer provide supporting documents for adjustments in revenues/costs and journal entries to prove those adjustments. However, the Taxpayer provided only clarification without providing the accounting treatment (related entries and accounts) and calculations on 17/10/1439 AH. This is based on Article Eleven paragraph (1) of the Executive Regulations of the Income Tax Law, where the losses that are carried forward are the carried forward losses approved based on the Authority's assessments. No losses appeared in the Authority's assessment for the year 2014 AD, where the Authority's assessment resulted in adjusted profits of (165,709) riyals. In addition to that, the Taxpayer carried forward losses before adjustment with what he stated were prior years' adjustments, where he carried forward losses of (898,029)

riyals, which are losses for the year ended 31/12/2014 AD, without adding any adjustments to them. The Authority provided its letter addressed to the Taxpayer to submit documents, which the Taxpayer responded to without providing supporting documents.

With regard to the clause (losses carried forward for the year 2015 AD), the Authority clarifies that it has assessed the Taxpayer with regard to the year 2015 AD, based on the inspection report, where it was found that there are no losses from the years prior to the year 2015 AD, and by studying the Taxpayer's objection, we find that it is demanding to take the accumulated carryover loss in the financial statements based on the report of the chartered accountant, and this is contrary to what was stipulated in the tax regulation, and therefore its objection was rejected in accordance with Article Twenty-One of the Income Tax Law. The Circuit canceled the Authority's decision for the year 2015 AD, causing that the Taxpayer has a previous lawsuit related to the year 2014 AD, which was issued by a decision to cancel the Authority's action in all clauses and was not appealed. The Authority answers that this is incorrect, as the Authority appealed against that decision in Case No. (154395-2022-I) dated 10/10/2022 AD, which is incorrect and contrary to the statutory requirement.

With regard to the clause (delay fine), the Authority clarifies that with regard to the fine associated with the clauses accepted by the Authority, it informs the Authority to abandon its appeal with regard to the fine related to the clauses accepted by the Authority related to the procedures resulting from the Authority's appeal, according to the decision of the Adjudication Circuit in terms of the grounds and the retention of the other clauses, and with regard to the associated fine that the Authority appealed against: The Circuit issuing the decision subject to appeal amended the Authority's procedure due to its cancellation of some clauses, and since the Authority has appealed against those clauses, the Authority requests to support its procedure in accordance with its response note submitted. The Authority also objects to the clause (foreign procurement differences) and the clause (accelerated tax payments for the year 2017 AD), and therefore the Authority adheres to the validity and safety of its procedure and requests that the decision of the Adjudication Circuit on the clauses subject to appeal be overturned for the above grounds.

"On Wednesday, dated 24/01/2024 AD, the First Appeals Circuit for Income Tax Violations and Disputes held its session with the full attendance of its members via visual communication in accordance with remote visual litigation procedures; based on what is stated in clause number (2) of Article Fifteen of the Rules of Work for Committees for Adjudication of Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441 AH; and after reviewing the appeal submitted by both parties to the case, and after examining the contents of the case file, the Circuit determined that the case had become ready for adjudication and issuance of a decision on its subject matter, and accordingly the Circuit decided to close the pleadings and reserve the case for adjudication."

## Grounds:



upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and as for the Authority's appeal regarding the clause (Re-entry of the audited financial statements for the years preceding 2015 AD), and where its appeal lies that the Taxpayer reports that when preparing the financial statements for 2016 AD, it noticed inadvertent errors related to the years preceding 2014 AD and 2015 AD, and in order to correct those errors, it made the required adjustments to the revenues and costs for the years mentioned above, and when studying the objection and reviewing note (12) to the financial statements for 2015 AD, it became clear that the clause of prior years' adjustments (representing service fees charged by one of the related parties, the ... company (Affiliate) for the fiscal year ended 31December 2014 AD, which was not recorded in the accounting records at the time and was recorded in the current year as prior years' settlements, knowing that the fees charged to the branch are in line with the service agreement signed on 19/04/2014 AD between the two parties), so the Taxpayer's objection was rejected. Whereas Article (10) Paragraph (11) of the Executive Regulations of the Income Tax Law stipulates that expenses that may not be deducted: "The value of the materials supplied or the value of the services provided by parties associated with the Taxpayer in excess of the prices used between independent parties." Whereas Article (12) of the Income Tax Law stipulates: "Expenses associated with earning: All ordinary and necessary expenses for the achievement of taxable income, whether paid or due, incurred during the tax year are deductible expenses when calculating the tax base, with the exception of any expenses of a capital nature, and other expenses that are not deductible under Article Thirteen of this Law, and other provisions of this Chapter." Article (9), paragraph (1) of the Executive Regulations of the Income Tax Law stipulates that the expenses that may be deducted to determine taxable income are all ordinary and necessary expenses to achieve taxable income, whether paid or due, provided that the following controls are met: It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. It should be related to the tax year. not be capitalist in nature. be related to the realization of taxable income.". Accordingly, and since the decision in question ended with the cancellation of the Authority's procedure on the basis that it did not appear that the Authority had requested certain documents to verify the impropriety of the adjustments and amendments for the errors that were recorded in the accounting, and by reviewing the Appeal of the Supplementary Authority, it was found that the Authority had requested the Taxpayer to submit the supporting documents for the amendments in revenues/ costs, and the daily entries to prove those amendments, but the Taxpayer only submitted a clarification without submitting the accounting treatment (related entries and accounts) and



calculation on 17/10/1439 AH, as the Taxpayer responded to it without submitting the supporting documents, and since the Taxpayer did not submit the supporting documents required of it, which ends with the Circuit accepting the Authority's appeal and canceling the decision of the Adjudication Circuit in this clause.

Whereas, regarding the Authority's appeal regarding the clause (Foreign Procurement Differences) and the clause (Accelerated Tax Payments for 2017 AD), and whereas Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the lawsuit is set, the content of the lawsuit and the answer must be monitored before the agreement is recorded, taking into account that the origin of the lawsuit is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or circuit, provided that the merits of the lawsuit or some of it is among those agreed upon." Based on the above, and where it has been proven to this Circuit the Authority's request to leave the appeal as stated in the letter issued by it in the supplementary appeal list submitted on December 24, 2023 AD, which includes: Second: Regarding the Authority's appeal against the Circuit's decision in Clause (Second) of its decision to cancel the Authority's decision related to the clause of external procurement differences for the years 2015 AD and 2017 AD: The esteemed Authority informs the Circuit of the abandonment of its appeal in relation to the above decision related to the above clause and the procedures resulting from the Authority's appeal, according to the findings of the decision of the Adjudication Circuit in terms of the merits. Retain the other clauses. ... Fourth: Regarding the Authority's appeal against the Circuit's ruling of Clause (V) of its decision to cancel the Authority's decision related to the clause of accelerated tax payments for 2017: The esteemed Authority informs the Circuit of the abandonment of its appeal in relation to the above decision related to the above clause and the procedures resulting from the Authority's appeal, according to the findings of the decision of the Adjudication Circuit in terms of the merits. Retain the other clauses.", with which the Circuit ends up accepting the abandonment of the litigation.

Whereas, with regard to the Authority's appeal on the clause (losses carried forward to 2015 AD), and where its appeal lies that it has assessment ed to the Taxpayer in respect of the year 2015 AD, based on the inspection report, where it became clear that there are no losses from the years preceding 2015 AD, and by studying the Taxpayer's objection, we find that it is demanding to take the accumulated stage loss in the financial statements based on the report of the chartered accountant, and this is contrary to what is stipulated in the tax regulation. Whereas Article (21) of the Income Tax Law stipulates: "(a) Net operating losses may be carried forward to the tax year following the year in which the loss was realized. The carried-forward loss shall be deducted from the tax base for the following tax years until the full accumulated loss

is recovered. The regulation shall specify the maximum limits allowed to be deducted annually. (b) A net operating loss is the deductions allowed under this Chapter which are in excess of the taxable income for the taxable year. (c) To calculate the net operating loss of a natural person, deductions and revenue for the activity shall be considered only." Paragraph (1) of Article (11) of the Executive Regulations of the Income Tax Law relating to the posting of losses stipulates: "The Taxpayer has the right to carry forward the adjusted operating losses, according to the controls of the law and these regulations for tax purposes, to the tax years following the year of loss by reducing the profits of the following years until the full accumulated operating losses are recovered, without being limited to a specific period, provided that the maximum allowed deduction in each tax year does not exceed (25%) of the annual profit in accordance with the Taxpayer's declaration." Based on the foregoing, and where the Authority reports that it has assessment ed the Taxpayer based on the inspection report, as it became clear that there are no rounded losses from the years prior to 2015 AD, and where the Taxpayer is claiming to take the accumulated stage loss in the financial statements based on the report of the chartered accountant, and this is contrary to what was stipulated in the tax regulation, while the decision in question ended with the cancellation of the Authority's procedure, given that the Taxpayer has a previous lawsuit related to the year 2014 AD, which was issued to cancel the Authority's procedure in all clauses and has not been appealed against, and the Authority indicated that this is not true, as the Authority appealed that decision in case No. ( I -2022-154395) dated 10/10/2022 AD, which ends with the Circuit accepting the Authority's appeal and canceling the decision of the Adjudication Circuit in this clause.

Whereas, with regard to the appeal of the parties regarding the clause (delay fine), and where the Taxpayer's appeal lies in the fact that the intention of the regulations is to impose a delay fine in the event that the payment of the due tax is delayed, which has become final as a result of the Taxpayer's acceptance of the assessment or the completion of the objection and appeal procedures, and accordingly the delay fine is imposed as of the date on which the tax obligation became finally due. While the Authority's appeal lies in that it leaves its appeal with regard to the fine related to the clauses in which the Authority left its appeal, and with regard to the associated fine that the Authority appealed against, the circuit issuing the decision subject to appeal amended the Authority's procedure due to its cancellation of some clauses, and since the Authority appealed on those clauses, the Authority demands that its procedure be supported. Whereas paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states that: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in the payment of the tax to be withheld and accelerated payments, calculated from the date the tax is due to the date of payment." Paragraph (1) of Article 68 of the executive regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425 AH, stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b. Delay in paying the tax due under the Authority's

assessment." Article 67(3) of the Executive Regulations of the Income Tax Law also stipulates: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the Law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these Regulations, including cases that are disputed, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on the foregoing, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the law and the amendments made by the Authority, which ends with the Circuit partially accepting the appeal and amending the decision of the Adjudication Circuit in this clause by supporting the Circuit's decision to impose the delay fine from the due date on the clauses in which the Taxpayer's appeal was rejected and the delay fine on the clauses accepted by the Authority, and the imposition of a delay fine on the clauses in which the Authority's appeal was accepted.

regarding the Taxpayer's appeal on the remaining clauses in the case. Whereas there is no fault in the Circuit's adoption of the grounds for the contested decision without adding to them, since it deemed that those grounds were sufficient and did not require the addition of any new information, because in upholding it on the grounds set out in those grounds, it confirmed that it did not find in the objections raised against the decision anything that warranted a response beyond what was contained in those grounds. That being the case, and since it has been established that the decision under appeal in the dispute concerning the contested clauses is consistent with the valid grounds on which it is based and sufficient to support its ruling, as the Circuit that issued it examined the substance of the dispute and reached the conclusion set out in its ruling. This court did not find anything that would warrant correction or comment in light of the arguments presented before it. This court therefore rejects the appeal and upholds the decision of the Circuit of first instance in its entirety with regard to the remaining clauses of the claim, based on the grounds given.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

First: Acceptance of the appeal procedurally of the Taxpayer/ (...), commercial register (...), unique number (...), and the appeal submitted by the Zakat, Tax and Customs Authority, against the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2398) issued in Case No. (I-2020-58695) related to the tax assessment for the years from 2015 AD to 2017 AD.

Second: On the merits:

- 1- Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause (reinstatement of the audited financial statements for the years prior to 2015 AD).



- 2- Acceptance of the abandonment of the litigation in relation to the Authority's appeal on the clause (External Procurement Differences).
- 3- Acceptance of the abandonment of the litigation in relation to the Authority's appeal on the clause (accelerated tax payments for the year 2017 AD).
- 4- Reject the Taxpayer's appeal and support the decision of the Adjudication Circuit regarding the clause (realized losses in the foreign currency exchange rate).
- 5- Regarding the parties' appeal on the clause (losses carried forward for 2015 AD and 2017 AD):
  - (A) Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit for the year 2015 AD.
  - (B) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit of 2017 AD.
- 6- Amending the decision of the Adjudication Circuit regarding the parties' appeal on the delay fine clause.

This decision is considered final according to the provisions of Articles 47 and 48 of the rules of operation of the committees for adjudicating tax violations and disputes.





## Paid Amounts



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-171717

Case No. W-2023-171717

### Keywords

Income Tax - Prepaid Amounts – Acceptance of the Authority's Appeal – Acceptance of the Taxpayer's Appeal

### Summary:

The Taxpayer and the Zakat, Tax and Customs Authority objected to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2526), where the Authority's appeal lies on the clause (amounts paid in advance for the year 2015), as it claims that the Taxpayer did not submit the documents supporting the payment. The Taxpayer's appeal on the clause (amounts recorded as expenses due for the years from 2014 AD to 2017 AD) lies in the rejection of the Adjudication Circuit on the clause in dispute, as it claims to pay the withholding tax for all amounts actually paid to the beneficiaries and that it paid the withholding tax to the Authority for all amounts actually paid to the beneficiaries during the periods in appeal and subsequent periods (when the incident establishing the tax, which is the actual payment), with a total amount greater than the amounts of the assessment in dispute. Whereas, the Appeal Committee established in the Authority's appeal the validity of what it indicated that the payment documents are not related to the periods in dispute, and that the Taxpayer did not submit the documents supporting the payment and related to the periods in dispute, and with regard to the Taxpayer's appeal that the documents it submitted are for the entire period in dispute, which the Authority has not challenged their validity. Consequently, the authority's appeal is accepted, and the Taxpayer's appeal is accepted.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (5) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)



- Article (70) of [The Sharia Procedure Law promulgated by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)
- Paragraph (a) of Article (77) of [The Income Tax Law issued by Royal Decree No. \(M/1\) dated 15/01/1425AH.](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Article (63) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (3) of Article (67) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

#### Facts:



the appeal filed on 26/01/2023 AD, from/... Resident ID number (...) In its capacity as the legal representative of the appellant company under its Memorandum of Association and the Zakat, Tax and Customs Authority, the First Circuit's decision to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2526) issued in Case No. (W-2021-81540) related to the assessment of withholding tax for the years 2014 AD to 2017 AD, in the lawsuit filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

- 1- Rejection of the Plaintiff's objection regarding the statute of limitations for 2014 AD and 2015 AD.
- 2- Cancel the Defendant's decision regarding the clause of the amounts paid in advance for the years 2014 AD and 2015 AD.
3. Rejection of the Plaintiff's objection regarding the clause of amounts recorded as expenses due for the years from 2014 AD to 2017 AD.
- 4- Cancel the Defendant's decision regarding the clause of withholding tax as related parties for the years from 2014 AD to 2017 AD.
- 5- Rejection of the Plaintiff's objection regarding the clause of refund of the due tax.
- 6- Modifying the Defendant's procedure with regard to the delay fine clause.

Whereas this decision was not accepted by the Taxpayer (... company), it submitted an appeal statement that was reviewed by the Circuit, where the Taxpayer's appeal lies on the clause (amounts recorded as expenses due for the years from 2014 AD to 2017 AD), the Taxpayer explained that the adjudication

committee based its ruling on rejecting the company's objection to its claim that the company did not provide documentary support for the clause, while the company confirmed through the response memorandum to the Authority's view that it paid the withholding tax to the Authority for all amounts actually paid to the beneficiaries subject of the clause during the periods subject of appeal and subsequent periods (when the event establishing the tax, which is the actual payment, was achieved) with a total amount greater than the amounts of the assessment subject of the dispute, as follows: A- With regard to transactions with the company (...) Which was subjected by the Authority to withholding tax for the years from 2014 AD to 2017 AD, the total transactions recorded as an expense in the company's books in the period from 2014 AD to 2018 AD amounted to (227,843,788) Saudi riyals, while the amounts paid to the supplier, which were subjected by the company to withholding tax upon the realization of the taxable event, which is the actual payment and not the entitlement according to the Authority's procedure, amounted to (293,880,302.13) Saudi riyals, and therefore it appears that the company withheld the tax on the amounts paid to the company (...) but at different intervals. B- With regard to transactions with the company (...) Which the Authority subjected to withholding tax for the year 2016 AD, the total transactions recorded as expenses in the company's books during the period from 2016 AD to 2017 AD amounted to (3,505,492) Saudi riyals, while the amounts paid to the supplier on which the company applied withholding tax when the tax-generating event occurred - which is the actual payment event and not the accrual entry according to the Authority's procedure - amounted to (4,278,247.79) Saudi riyals. C- With regard to transactions with the company (...) Which the Authority subjected to withholding tax for the years 2014 AD and 2015 AD, the total transactions recorded as expenses in the company's books during the period from 2014 AD to 2017 AD amounted to (5,233,341.00) Saudi riyals, while the amounts paid to the supplier on which the company applied withholding tax when the tax-generating event occurred - which is the actual payment event and not the accrual entry according to the Authority's procedure - amounted to (5,370,706.00) Saudi riyals. D- With regard to transactions with the company (...) Which was subjected by the Authority to withholding tax for the years 2016 AD and 2017 AD, the total beneficial transactions as an expense in the company's books in the period from 2016 AD to 2018 AD amounted to (2,193,923,00) Saudi riyals, while the amounts paid to the supplier, which were subjected by the company to withholding tax when the tax-creating event occurred, which is the actual payment and not the due entry in accordance with the Authority's procedure, amounted to (1,957,216,67) Saudi riyals. E- With regard to the rest of the transactions that the Authority subjected to withholding tax for the years from 2014 AD to 2017 AD, the company submitted monthly withholding forms in addition to payment receipts that support the payment of those amounts during the subsequent periods when the event establishing the tax, which is the actual payment, is realized. With regard to the Taxpayer's appeal on the clause (delay fine), the Taxpayer explained that the adjudication committee, according to its decision under appeal, supported the Authority's point of view in imposing delay fines on the withholding tax differences for the years from 2014 AD to 2017 AD. Accordingly, the company appeals the decision of the adjudication committee as follows: The delay fine has



arisen due to a real and clear difference of views between the Authority and the Company. The objection committees have ruled in many objections not to impose a delay fine when there is a real difference in views between the Authority and the Taxpayer. Therefore, the Taxpayer demands acceptance of his appeal and reversal of the adjudication circuit's decision on the clauses subject to his appeal. Since this decision was not accepted by the Authority, it submitted an appeal brief which the circuit reviewed. The Authority's appeal concerns the clause (amounts paid in advance for the year 2015 AD). The Authority informed the honorable committee that the Plaintiff did not object to the clause during the examination and audit phase after receiving the preliminary assessment and raised it during the objection phase. Accordingly, the Authority held a hearing session with the Plaintiff on 25/10/2021 AD, and therefore the Authority wishes to summarize its response to the clause as follows: For the month of August 2015 AD: After studying and reviewing the documents submitted by the Plaintiff, it was found that the attached repayments from the Plaintiff, which it stated were related to the declaration of August 2015 AD, it was clear that it paid them in 2016 AD, and it was also found to the Authority after reviewing the Plaintiff's statement of account for August 2015 AD that there were no repayments for the period, and with regard to the month of July 2014 AD: After reviewing the documents submitted by the Plaintiff, which it indicated that payment was made in the December 2015 AD declaration, it was found that payment was made in the April 2015 AD declaration. Accordingly, it is found that the periods for which the Plaintiff reported that it paid the withholding tax do not match the amounts of the assessment and do not match the documents supporting the payment. The Plaintiff did not provide a detailed statement of the expenses due with the non-resident parties and the extent of its supply of withholding tax, as paragraph (3) of Article (57) of the Executive Regulations of the Income Tax Law stipulates that: "3-The burden of proving the validity of the revenues, expenses and any other data mentioned in the Taxpayer's declaration shall fall on the Taxpayer. In the event that the Taxpayer is unable to prove the validity of what is mentioned in its declaration, the Circuit may, in addition to applying any other statutory sanctions, not allow the expenditure that is not proven to be true by the Taxpayer or make a discretionary assessment according to the point of view of the Circuit in the light of the circumstances and facts related to the case and the information available to the Circuit.", As for the grounds of the Circuit, the Authority answers that it is incorrect, and therefore the Authority adheres to its procedure and safety. regarding the Authority's appeal regarding the delay fine clause, the Authority clarifies that the delay fine was imposed on tax differences not paid within the statutory deadline based on paragraph (a) of Article 77 of the Income Tax Law, which stipulates that: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes the delay in paying the tax required for withholding and accelerated payments and is calculated from the date the tax is due to the date of payment", as well as based on paragraph (1/b) of Article 68 of the Executive Regulations of the Income Tax Law, which states: "In addition to the fines mentioned in the previous article, (1%) of the unpaid tax shall be added for every thirty days of delay in the following cases, including what is stated in the paragraph: - b- Delay in

paying the tax due under the assessment ing of the interest." Whereas the fine is consequential and due to the Authority's appeal on the above clauses, it adheres to the validity of its procedure in imposing a delay fine on the unpaid tax differences and demands the acceptance of its appeal and the reversal of the decision of the Adjudication Circuit on the clauses subject to its appeal.

on Wednesday, on: 08/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are written in the minutes, via video communication in accordance with the procedures of remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No: (25711) and dated: 08 /04 /1445AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, with regard to the Authority's appeal on the clause (Advance payments for 2015 AD), where the Authority's appeal lies in the appeal on the acceptance of the adjudicator's objection to the disputed clause, as it claims that the Taxpayer did not submit the documents supporting the payment. based on paragraph (3) of Article (57) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/6/1425 AH, which stipulates the following: "3- In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the foregoing, and with reference to the documents submitted, the validity of what the Authority indicated that the payment documents are not related to the periods in dispute, and therefore since the Taxpayer did not submit the documents supporting the payment and related to the periods in dispute, which leads the Circuit to accept the Authority's appeal and cancel the decision of the Adjudication Circuit on this clause.

With regard to the Taxpayer's appeal regarding the clause (the amounts recorded as expenses due for the years from 2014 AD to 2017 AD), where the Taxpayer's appeal lies in the appeal against the dismissal of its objection on the clause in dispute, as it claims to pay withholding tax on all amounts actually paid to the

beneficiaries. Based on the above, it turns out that the Taxpayer's appeal is that it paid the withholding tax to the Authority for all the amounts actually paid to the beneficiaries during the periods subject to appeal and subsequent periods (when the Taxpayer's actual payment is realized) with total amounts greater than the amounts of the assessment in question, while the Authority indicated that the Taxpayer's objection was rejected and a withholding tax was imposed on him, due to the failure to submit the master account through which the Authority can verify the amounts paid and the amounts due. Therefore, the lesson in imposing withholding tax on the Taxpayers is the actual payment, which the Taxpayer in the years in question proved by submitting both "a statement of the amounts paid for the years from 2014 AD to 2018 AD according to the company's monthly withholding forms - monthly withholding forms - the relevant payment receipts", and by reviewing the documents submitted, it was found that they are for the entire period in question, which

Regarding the appeal of the two parties regarding the clause (delay fine), based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these regulations, including cases that are contested, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." based on the above, and with reference to the case file and the defenses and documents it contains, and since the delay fine is calculated from the date of expiration of the deadline for filing the return to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the dispute between the two parties is based on a fundamental difference, and did not arise from a significant difference in the interpretation of the statutory texts therefore, the Authority's decision to impose the delay fine from the due date on the clauses where the Taxpayer's objection was rejected and the delay fine on the clauses where the Authority's decision was canceled due to the loss of the original imposition of the tax is correct, which leads the Circuit to modify the decision of the Adjudication Circuit on this clause.

With regard to the Authority's appeal regarding the clause (amounts paid in advance for the year 2014 AD), and where Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If an agreement is reached before the case is settled, it is necessary to record the content of the case and the response before documenting the agreement, taking into consideration that the original case must fall within the jurisdiction of the circuit, even if the content of the agreement falls within the jurisdiction of another court or circuit, provided that the subject matter of the case or part of it is among what has been agreed upon." Based on the foregoing, and whereas it has been established to this circuit that the Authority has requested to abandon the appeal according to what was stated in the letter issued by it in the supplementary memorandum, which contained: "The Authority informs the honorable circuit that it abandons its appeal regarding the above-mentioned clause specifically (amounts paid in advance for the year 2014 AD) and the procedures that resulted from the Authority's appeal, in accordance with what the adjudication circuit's decision concluded in its reasoning..." therefore, the Circuit shall accept the abandonment of the litigation.

Regarding the Authority's appeal regarding the clause (Withholding Tax as Associated Entities for the years 2014 AD to 2017 AD), Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If an agreement is reached before the case is settled, it is necessary to record the content of the case and the response before documenting the agreement, taking into consideration that the original case must fall within the jurisdiction of the circuit, even if the content of the agreement falls within the jurisdiction of another court or circuit, provided that the subject matter of the case or part of it is among what has been agreed upon." Based on the foregoing, and whereas it has been established to this circuit that the Authority has requested to abandon the appeal according to what was stated in the letter issued by it in the supplementary memorandum, which contained: "The Authority informs the honorable circuit that it abandons its appeal regarding the above-mentioned clause specifically (withholding tax as related entities) and the procedures that resulted from the Authority's appeal, in accordance with what the adjudication circuit's decision concluded in its reasoning..." therefore, the Circuit shall accept the abandonment of the litigation.

with regard to the Taxpayer's appeal on the remaining clauses in the case, the Circuit is not to be faulted for adopting the grounds for the decision under appeal without adding to them when it assesses that these



grounds make it unnecessary to introduce anything new, because in upholding the decision with what these grounds contain, it is certain that the Circuit did not find any objections to the decision that merit a response beyond what was included in these grounds, and since this is the case and it is proven that the decision under appeal regarding the disputed clauses was consistent with the valid grounds on which it was based and sufficient to carry its judgment since the issuing Circuit scrutinized the dispute and came to the conclusion it reached in its operative part, and since this Circuit did not notice anything that warrants censure or comment on it in light of the arguments raised before it, this Circuit concludes to reject the Taxpayer's appeal and uphold the decision of the Adjudication Circuit in its conclusion on the remaining clauses in the case, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

First: Accepting the appeal procedurally from the Taxpayer / ... company (Business Register...) Unique number (...). the appeal filed by the Zakat, Tax and Customs Authority against the decision of the First Circuit for the Resolution of Income Tax Violations and Disputes in Dammam, No. (IZD-2022-2526) issued in Case No. (W-2021-81540) related to the tax assessment for the years 2014 AD to 2017 AD.

Second: On the merits:

1- With regard to the Authority's appeal against the clause (advance payments for the year):

(A) Accepting the abandonment of the litigation in connection with the Authority's appeal on the clause (amounts prepaid for the year 2014 AD).

(B) Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause (amounts prepaid for the year 2015 AD).

2- Accepting the abandonment of the litigation in relation to the Authority's appeal on the clause (withholding tax as related parties for the years from 2014 AD to 2017 AD).

3- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (Limitation for 2014 AD and 2015 AD).

4- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (amounts recorded as expenses due for the years from 2014 AD to 2017 AD).

5- Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (tax refund due to it (paid on account)).

6- Amending the decision of the Adjudication Circuit regarding the clause (delay fine).



This decision is considered final according to the provisions of Articles 47 and 48 of the rules of operation of the committees for adjudicating tax violations and disputes.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024- 171192

Case No. W-2023-171192

### Keywords

Income tax -Amounts paid - Material error - Acceptance of the Authority's appeal

### Summary:

The Zakat, Tax and Customs Authority objected to the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ITR-2022-6245), where its appeal lies on the clause (material errors) because there was no error in calculating the amounts reassigned for the months in which the payment was made. Whereas, it has been proven to the Appeal Committee that the value of the tax due has been reduced after redirecting the payments to the correct periods, which led to the emergence of a debit balance in the company's account with the possibility of redirecting those payments to the unpaid tax periods in the event that the company requests, which shows that there is no tax duplication. Consequently, the authority's appeal is accepted, and the decision of the adjudication committee is canceled.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (1) of Article (63) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:

the appeal filed on 24/01/2023 AD, from / ... company The appeal filed on 25/01/2023 AD by the Zakat, Tax and Customs Authority against the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ITR-2022-6245) issued in Case No. (Z-2021-87689) related to the tax assessment for the months of March 2019 AD, December 2019 and June 2020, in the case filed by the

Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

Admissibility of the case procedurally, objectively:

First: Acceptance of the Plaintiff's objection/ ... company , Commercial Registration No. (...), against the decision of the Defendant/ Zakat, Tax and Customs Authority from a procedural perspective.

Secondly: On the merits:

- 1- Annulment of the Defendant's decision in respect of Clause (Material Errors).
- 2- Reject the Plaintiff's objection regarding the clause (withholding tax).
- 3- Cancel the Defendant's decision regarding the clause (concealment fines).
- 4- Cancellation of the Defendant's decision regarding the clause (amending the tax rate on technical and advisory services from 5% to 15%).
- 5- Amendment of the Defendant's decision regarding the clause (delay fine).

since this decision was not accepted by the parties, each of them filed a list of appeals, which included the following:

regarding the Taxpayer's appeal, it submitted a list of appeals, which was reviewed by the Circuit, which stated that the Taxpayer requests that its appeal be accepted and that the decision of the Adjudication Circuit be overturned.

the decision was not accepted by the Zakat, Tax and Customs Authority, which filed its appeal against the challenged decision by means of an appeal regulation that included the following summary:

With regard to the Authority's appeal against the decision of the Adjudication Circuit, its appeal may be with regard to (material errors), as the Appellant (the Authority) demands the cancellation of the Authority's decision on this clause on the basis that the Authority clarifies that there is no material error as claimed by the Plaintiff, where the tax was imposed according to the loan proceeds shown in the table below, and since the Authority's action was to subject the withholding tax payments for each period to the correct period, which resulted in the Authority's examination of the objection to exclude those amounts from the Taxpayer's declaration for the month of December 2020. Accordingly, the Authority confirms that there is no other material error and the remaining balance of 319,313,170.09 riyals in the December 2020 AD declaration is the balances declared by the Taxpayer in its declaration. The Authority also confirms that the amounts paid by the Taxpayer in the December 2020 AD declaration are increased due to the Authority's reduction of the value of the tax due after redirecting the payments to the correct periods led to the appearance of Accordingly, the Authority confirms that there is no other material error. The Authority also found that the Taxpayer paid the interest of the loans to the beneficiary without deducting them. The

Taxpayer stated that the majority of the returns of the loans were paid in December and before. Whereas it was stated in the response of the appellee (the assignee) that pursuant to Royal Decree No. 45089 dated 23/7/1441 AH corresponding to 18 March 2020 AD, Royal Decree No. 64539 dated 1/12/1441 AH corresponding to 22 July 2020AD, and the executive ministerial decisions that followed these Royal Decrees, the latest of which was Ministerial Decision No. 2303 dated 8/6/1442 AH corresponding to 21 January 2021 AD, related to the extension of the initiative of exemption from fines until 31 March 2021 AD and at a rate of exemption of 100% of fines. The company took the initiative to review all its records and declared the returns of the loans paid during the months of March 2019 AD, December 2019 AD and June 2020 AD as part of the withholding tax return for the month of December 2020 and paid the tax due on it and benefited from the initiative to exempt from fines. It is worth mentioning that the company has supplied the tax related to the month of December 2020 AD and its predecessors through the deduction form for the month of December 2020 AD in order to save time and effort and activate the provisions of the initiative because more time and effort will be spent unnecessarily if the company uses monthly deduction forms for multiple months to activate the initiative without any benefit from it because the fines have been canceled, and there is no provision for this in the provisions of the initiative. In order for the Authority to issue its basic assessment on the company, according to which it has subjected the amounts of loan proceeds shown in the table below related to the ... company Bahrain Group during the years 2019 AD and 2020 AD for withholding tax, not taking into account that these same amounts are in addition to the amounts of other loan proceeds for the same supplier ... Bahrain Group) with a total of SAR 1,295,945,970 has been subjected by the company to withholding tax in the monthly withholding tax return for the month of December 2020 AD within the loan returns statement. In this regard, the Company attaches to your Excellency the monthly deduction form for the month of December 2020 AD in addition to the notice of payment of withholding tax No. (5).

With regard to the clause (tax rate on technical and advisory services from companies ... Sister (5% to 15%), where the Appellant (the Authority) demands the annulment of the Circuit's decision on this clause on the basis that the ... company Group (... Kuwait) is an associated company and a withholding tax for technical and consulting services of 15% instead of 5% must be supplied for the following grounds: 1 Owns a ... company Group (... Kuwait) Most of the votes of the board of directors of the Plaintiff company "... Saudi Arabia The ... company Group (... Kuwait) according to notes No. (9) and No. (35) in the audited financial statements for 2019 on the company's ability to acquire ... Saudi Arabia, the "Plaintiff", through its representation of the majority percentage in the Board of Directors as explained, and by reviewing the grounds for the decision, the conditions and controls of the associated companies do not apply in accordance with the Memorandum of Association, which means that the company does not control... Kuwait Group on the Plaintiff and after reviewing the attached Memorandum of Association at the Municipality site, it appears that there are no dates on the contract and based on what was stated in the Authority's response note that the financial statements of the ... company Group for the year 2019 AD shows

the existence of an event that led to the arrival of the group (... Kuwait) indicates that it is able to control ... Saudi Accordingly, the Authority confirms the validity and integrity of its procedure by subjecting the amounts paid for technical and consulting services to the ... company Group (... Kuwait) by 15% as a related party based on the provisions of paragraph (A/ 2) of Article (63) of the Income Tax Law, and based on Article (64) of the Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425 AH, paragraph (C/2) , as well as based on Article (63) of the Executive Regulations of the Income Tax Law. While it was stated in the Defendant's response (the Taxpayer) that the company's response to the authority's appeal, whether the company is considered assessment ed or not is based on the tax law, not the accounting standards, specifically on Article 64 of the Income Tax Law and Article 63 of the Executive Regulations of the Income Tax Law, where it becomes clear to Your Excellency that the conditions for the association of the company are not met... Kuwait with the company from a tax point of view. The company is surprised by the claim of the Authority regarding what it stated in its memorandum of appeal, " and based on what was stated in the reply memorandum of the Authority that the financial statements of the ... company Group for the year 2019 AD shows the existence of an event that led to the group's conclusion (... Kuwait indicated that it is able to control ... Saudi Arabia , which is a false basis and the company is surprised by the insistence of the Authority to consider the ... company Kuwait as a company is tax affiliated with the company, ignoring all the statutory provisions contained in the tax law in this regard, which the Authority relied on in its above view, which raises the Company's doubts about the Authority's understanding of these provisions and the purpose of the tax legislator from them, as it is no secret to Your Excellency that the concept and conditions of control from an accounting point of view are completely different from the concept and conditions of control from a tax point of view, as the provisions of Article 64 of the tax law have been adequately and sufficiently interpreted, which does not accept interpretation of companies and persons to be considered as assessment ed companies from a tax point of view. Therefore, the deduction rate adopted by the Authority on the amounts related to companies ... Affiliated company amounting to 15 is an incorrect ratio, as all ... sister companies, are not considered related companies based on the text of paragraph (c) of article 64.

With regard to the clause (concealment fine), and with regard to the clause (delay fine), as the appellant (the Authority) demands the cancellation of the decision of the Circuit on this clause on the basis that the Authority confirms that the Taxpayer practiced intentional conduct by evading the withholding tax, as it stated when inquiring about loans from the founders and the group ... Kuwait and its containment of interest on loans, that the loans contain interest at the market rate, and the withholding tax on interest on loans was not paid to the Authority until December 2020 AD. When meeting with the Taxpayer to clarify loans and interest, it reported the existence of multiple loans and interest with the parent company, banks and other companies, but the Taxpayer did not, according to its statement in the first meeting, pay the interest on the loans, and the Taxpayer paid all the interest on the loans during the year within the December 2020 AD declaration under the pretext of benefiting from the initiative on February 1, 2021 AD. Note that the first meeting with the Taxpayer took place on January 28, 2021 AD, and the meeting was held again

with the Taxpayer to clarify the action taken. The Taxpayer stated that after referring to its accounts, it became clear that it paid interest on loans to a group ... In Kuwait, due to the difficulty of determining the periods that were deducted in December 2020, and by referring to the accounts of the Taxpayer sent, analyzing them, and analyzing the financial statements and bank statements received from SAMA, it is clear to the contrary, as shown in the working papers, that there was a repayment of interest on loans at previous dates, taking into account the documents and restrictions provided by the amount. The Taxpayer later stated via e-mail that the repayment of interest was in December 2020 AD for most of the amounts and that they were relatively insignificant in other periods. Accordingly, the penalty of fraud "evasion" has been imposed on the Taxpayer for deliberately providing incorrect information for the due period, for which withholding tax must be paid on the interest of loans subject to the laws and regulations of the Income Tax Law, based on Article (77) of the Income Tax Law and Article (69) of the Executive Regulations of the Law.

on Thursday, April 25, 2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members, whose names are recorded in the minutes, via videoconferencing in accordance with the procedures for remote videoconferencing; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No: (25711) and dated: 08/04/1445 AH.; At the call of the parties, ..., National ID No. (...), appeared as an agent for the Plaintiff under agency No. (...), and ... as the representative of the Defendant/Zakat, Tax and Customs Authority, under an authorization issued by the Deputy Governor of the Zakat, Tax and Customs Authority for Legal Affairs No. (.../.../1445) dated 19/03/1445 AH. When asked what it would like to add, the Defendant's representative stated that it maintains what has already been submitted in this case. when the Plaintiff's agent was presented with this information, it replied that it was sticking to what had already been submitted in this case. when the parties were asked what they wished to add, they replied in the negative, so the Circuit decided to close the hearing and deliberations.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and as for the Authority's appeal against the clause (material errors), and based on paragraph No. (3) of Article (57) of the Executive Regulations of the Income Tax Law, on: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of

the Authority in light of the circumstances and facts related to the case and the information available to the Authority."

Whereas, the Authority's appeal regarding the clause of material errors, and after reviewing the Authority's arguments that there is no material error in the calculation of the amounts reassigned for the months in which the payment was made, is as follows: The amount paid and shown by the Taxpayer's declaration in December 2020 AD is 1,296,370,864 (-) deducting from it the reclassified amounts to the correct periods March (2019) 375,000,000 December(2019) 375,000,000 March (2019 AD) 187,485,500 June (2020 AD) 39,572,193.91 The total amount that the Authority subjected in the correct periods (977,057,693.91) The remaining amount in the declaration for December 2020 AD after excluding what was subjected by the Authority in the correct periods 319,313,170.09 The Authority also acknowledged the existence of a debit balance to the Taxpayer and can redirect those payments to the unpaid tax periods Debit balance: 37,575,055.20 Whereas, the Taxpayer made the declaration for the month of December 2022 AD : 75,484,992 Since the Taxpayer did not submit the assessment notice in December 2022 AD to ensure the deduction of the amounts declared in the withholding tax for the month of December 2022 AD.

Based on the above, and by reference to the case file and the defenses and documents contained therein, the Authority clarified that the Authority's action was to subject the withholding tax payments for each period to the correct period, which resulted in the Authority, when examining the objection, excluding those amounts from the Taxpayer's declaration for the month of December 2020 AD, as the value of the tax due was reduced after redirecting the payments to the correct periods, which led to the emergence of a debit balance in the Company's account with the possibility of redirecting those payments to the unpaid tax periods in the event that the Company requests, which shows that there is no tax duplication, which requires accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause (material errors).

Whereas, regarding the Authority's appeal on the clause (percentage of tax on technical and advisory services from companies ... Sister (5% to 15%), and based on paragraph (c) of Article (64) of the Income Tax Law on Associated Persons and Persons under Single Control, "Companies or entities shall be deemed to be subject to a single control if they are controlled by fifty percent (50%) or more by the same person or persons connected in accordance with this Article as follows: 2- With regard to capital companies, control means ownership of their voting rights or ownership of their value directly or indirectly through a company or subsidiaries of any kind. " based on paragraph (1) of Article (63) of the Executive Regulations of the Income Tax Law issued by the Minister of Finance Decision No. (1535) dated 11/6/1425 AH, which stipulates the following: "A non-resident shall be subject to tax on any amount received from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following rates..." - Royalty or royalty, payments for services paid to the head office or an associated company.....at a rate of 15%. "



Based on the above, and since the dispute lies mainly on defining the concept of the associated company and the controlling company, as the tax law considers the company to be assessment ed when it owns 50% or more of the total equity or when proving control if it owns less than 50%, and by reviewing the documents submitted by the Authority to the financial statements of the ... company Kuwait Group for the year 2019 AD, where it was stated in Note No. (9) and (35) that " Based on an event that occurred in July 2018 AD, the Group concluded that it is able to control... Saudi Arabia, through its representation of the majority percentage in the Board of Directors, and by reviewing the Memorandum of Association, it is clear that the percentage of ownership in the disputed year reached 37%, i.e. less than 50%. But the existence of the clarification in the financial statements of a ... company Kuwait Discloses Proof of Control over ... Saudi Arabia, since it is an associated company and is subject to a 15% tax rate, which requires the Circuit to accept the Authority's appeal and cancel the decision of the Circuit of Adjudication regarding the clause (tax rate on technical and consulting services from ... Affiliated companies are from 5% to 15%).

Whereas, regarding the Authority's appeal concerning the clause (concealment penalty), and the Taxpayer's appeal regarding the clause (withholding tax for January 2021 AD), and whereas there is no fault with the Circuit in adopting the grounds of the decision under challenge without adding to them when it determined that those grounds are sufficient and do not require any new additions, because in upholding them with what those grounds contained, it is confirmed that it found nothing in the objections raised against the decision that merits a response beyond what those grounds already contained. Given this, and given that it is established that the decision under appeal regarding the dispute concerning the contested clauses was consistent with the valid grounds upon which it was based and which are sufficient to support its ruling, as the Circuit that issued it undertook to examine the core of the dispute and concluded with the result it reached in its operative part, and whereas this Circuit has not observed anything that requires correction or comment in light of the defenses presented before it, this Circuit hereby concludes by rejecting the Taxpayer's appeal and rejecting the Authority's appeal, and affirming the decision of the Adjudication Circuit under appeal in its conclusion, based on its stated grounds.

Whereas, regarding the appeal of the two parties regarding the clause (delay fine), and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425H, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income

Tax Law: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these regulations, including cases that are contested, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment."

Based on the above, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the law and the amendments made by the Taxpayer, and since the dispute between the two parties is a documentary dispute, and did not result in a significant difference in the interpretation of the statutory texts, which must be amended by the decision of the Adjudication Circuit to impose the delay fine from the due date on the clauses in which the Taxpayer's appeal was rejected, and the delay fine on the clauses in which the Authority's appeal was rejected due to the loss of the original taxation.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Accepting the appeal procedurally from the Taxpayer / ... company Commercial registration (...), unique number (...) And the appeal submitted by the Zakat, Tax and Customs Authority, against the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ITR-2022-6245) issued in Case No. (Z-2021-87689) related to the tax assessment for the months of March 2019, December 2019 AD and June 2020 AD.

2- On the merits:

(A) Accepting the appeal of the authority and canceling the decision of the Adjudication Circuit regarding the clause (material errors).

(B) Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause (tax rate on technical and advisory services from ... Affiliated companies are from 5% to 15%).

(C) Rejecting the Authority's appeal and upholding the decision of the Adjudication Circuit with regard to the concealing penalty clause.

(D) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (withholding tax for the month of January 2021 AD).

(E) Amending the decision of the Adjudication Circuit regarding the parties' appeal on the delay fine clause.



## Tax Accounting Rules



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR -2024- 190476

Case No. I-2023-190476

### Keywords

Income Tax - Tax Accounting Rules - Transaction Pricing -Acceptance of the Authority's Appeal

### Summary:

The Zakat, Tax and Customs Authority objected to the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ITR-2023-400), where its appeal on the clause (pricing of transactions for the years ending on 30 April 2018 AD until 30 April 2020 AD) lies in its amendment to the operating profit based on the instructions for pricing transactions and the guideline for pricing transactions and the income tax law. Whereas the Appeal Committee found that the Taxpayer did not submit documents related to the pricing of transactions, and did not provide a breakdown of its transactions with the related parties and their amounts, it is clear that the use of the average profit of (16.38%) in determining the pricing policy of transactions is the most appropriate application in the years in dispute. In addition, it is clear that the decision of the dismissal regarding the amendment of the Authority's procedure in accounting for the Taxpayer by (5.51%) for the years 2019 AD and 2020 AD without clarifying the basis of the amendment or its justifications, especially since the decision supported the Authority's procedure in accounting for the Taxpayer by (16.38%) for the year 2018 AD only. The implication is that the appeal of the authority is partially accepted and the decision of the adjudication committee is amended.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (62) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (10) of Article (11) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (3) of Article (57) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

## Facts:



The appeal submitted on 21/03/2023 AD by/ ..., National ID No. (...), in its capacity as an agent under the power of attorney No. (...), and under the license of the lawyer license No. (...), on behalf of the appellant company, and the appeal submitted on 22/03/2023 AD by/Zakat, Tax and Customs Authority, against the decision of the Third Circuit to adjudicate income tax violations and disputes in Riyadh City No. (ITR-2023-400) issued in Case No. ( I -2021- 89528) related to the tax assessment for the years from 2017 AD to 2019 AD, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

First: Acceptance of the Plaintiff's objection/ ... company , Commercial Register No. (...) on the decision of the Defendant/Zakat, Tax and Customs Authority in terms of procedurality.

Secondly: On the merits:

1- Rejection of the Plaintiff's objection to double adjustment of revenues for the years ended April 30, 2018 AD until April 30, 2020 AD, with a value of 10,905,069.49 riyals.

2- Amending the Defendant's decision regarding the pricing of transactions for the years ending on 30 April 2018 AD until 30 April 2020 AD.

3- Amending the Defendant's decision regarding the delay fine clause.

Whereas this decision has not been accepted by the Taxpayer (the ... company), it submits an appeal statement reviewed by the Circuit, where the Taxpayer's appeal lies on the clause (delay fine), the Taxpayer explains that according to the exemption initiative submitted by the Zakat, Tax and Customs Authority on June 1, 2022 AD, the settlement of the basic amount of taxes, including the disputed amounts, will entitle the company to waive the amount of delay fines imposed. He adds that it has benefited from the initiative of the Zakat, Tax and Customs Authority to exempt from the obligations of delay fines in accordance with the assessment and settled the basic amount of the disputed income tax obligations. He adds that there is no dispute currently about the delay fine between the company and the Zakat, Tax and Customs Authority. Despite this, the company maintains its previous position that delay fines must be applied from the date of the final decision on the dispute. He adds that the Authority stated that it will impose a delay fine of (1%) for each (30) it requests that its appeal be accepted and the decision of the Adjudication Circuit be reversed and annulled. This decision was also not accepted by the appellant (Zakat, Tax and Customs Authority), so it submitted an appeal list that was reviewed by the Circuit, where its appeal lies on the clause (pricing of transactions for the years ending on 30 April 2018 AD until 30 April 2020 AD), so the Authority clarifies that it has studied and prepared a transaction pricing report for the Taxpayer for the years 2018 AD to 2020 AD, after examining the status of transaction pricing for the ... company In the Kingdom of Saudi Arabia, where the Authority concluded that the return obtained by the company during the years from 2018 AD to 2020



AD does not fall within the neutral price range compared to comparable companies, and for this reason the operating profit was amended based on the instructions for pricing transactions and the guideline for pricing transactions and the income tax law, where the amendment was made to be the operating profit margin compatible with the principle of neutral price 16.38% for the years in question, and explains that it has done the following : - The Authority has assessment ed the Taxpayer to add an amount of 8,079,765 riyals to the operating profit for 2018 AD as a result of the application of the transaction pricing instructions because the percentage achieved by the company of (9.5%) is considered outside the neutral price range. - The Authority has charged the Taxpayer an amount of SAR 22,246,533 on the operating profit for 2019 AD as a result of the application of the transaction pricing instructions because the percentage achieved by the company of (-2.4%) is considered outside the neutral price range. - The Authority has assessment ed the Taxpayer to add an amount of 24,359,556 riyals to the operating profit for 2020 as a result of the application of the transaction pricing instructions because the percentage achieved by the company of (-1.9%) is considered outside the neutral price range. - The Authority has changed the method of pricing transactions from the independent comparative price to the net transaction profit margin (TNMM), and the profit level indicator is the operating margin. - A company has been identified... as a probationary party by virtue of being the least complex among sister companies. - The Authority prepared a study for determining the neutral price range and the comparison analysis to determine the comparable companies. The eight comparable companies accepted by the Authority achieved 16.38% as an average operating margin for the three years. - The operating profit margin has been amended to comply with the principle of neutral price and adds that during the objection phase, the Authority referred to the instructions for pricing transactions issued by Board of Directors Resolution No. 6-1-19 dated 25/5/1440 AH corresponding to 31/1/2019 AD, and to the guideline for pricing transactions and the OECD guideline, the following was reached: 1/ Double taxation on income earned from the Kingdom of Saudi Arabia: The Authority has adjusted the cost of sales of the "Taxpayer" company to suit the range of transaction pricing that was determined after re-examining the comparability analysis, and since the costs in the "Taxpayer" company are the revenues of a related party company "... with the unique number (...) And the branch of the company "... with the unique number (...) Which are accounted for on an estimated basis of (40%) of the company's revenues as a tax base, and after review and review; it appeared that there is already double taxation because the company receiving the amounts as revenues has been revalued in the company "the Taxpayer" as costs, but it must be taken into account that each company submits its declaration separately and in a discretionary manner, in addition to that if there is an exclusion of the amounts, the exclusion of the double amount must be made on the companies that are estimated to be the recipient of the amounts and to prevent tax evasion from a tax due to a less tax in terms of the amount, it must be amended in the companies that are accounted for discretionarily, and it adds that according to the attached example, the Authority believes that there is a avoidance of paying a higher tax amount than the amount to be paid, and the Authority does not object to asking the Taxpayer to amend the amount of revenues and asking him to exclude them from the companies

receiving these revenues, as it can amend in the companies that it requests that its appeal be accepted and the decision of the Adjudication Circuit be reversed and annulled.

On Thursday, 06/06/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of its members whose names are recorded in the minutes, via video communication in accordance with the procedures for remote video litigation; based on the provisions of clause (1) of Article 15 of the Rules of Work of Zakat, Tax and Customs Committees issued by Royal Decree No: (25711) and dated: 08 /04 /1445 AH, after reviewing the appeal request, the pleadings submitted, the papers and documents contained in the case file, after deliberation, and since the case is ripe for adjudication in its current state, the Circuit decides to close the pleadings and reserve the case for adjudication.

### Grounds:



upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and with regard to the Authority's appeal on the clause (Transaction Pricing for the years ended 30 April 2018 AD until 30 April 2020 AD), where the Authority's appeal lies in its amendment to the operating profit based on the Transaction Pricing Instructions, the Transaction Pricing Guide and the Income Tax Law, and based on the provisions of paragraph (3) of Article (57) of the Executive Regulations of the Income Tax Law, which stipulates that: "3-The burden of proving the validity of the revenues, expenses and any other data mentioned in the Taxpayer's declaration shall fall on the Taxpayer. In the event that the Taxpayer is unable to prove the validity of what is mentioned in its declaration, the Circuit may, in addition to applying any other statutory sanctions, not allow the expense that is not proven to be true by the Taxpayer or make a discretionary assessment according to the point of view of the Circuit in the light of the circumstances and facts related to the case and the information available to the Circuit . Whereas Article (62) of the Income Tax Law stipulates that: a. The authority has the right to correct and amend the tax shown in the declaration to make it compatible with the provisions of this law, and it has the right to make the tax assessment if the Taxpayer does not submit its declaration." Paragraph (A/2) of Article (63) of the Income Tax Law related to tax evasion procedures stipulates that: a. For the purpose of determining the tax, the Authority has the right to: 2 Re-adapting transactions whose form does not reflect their essence and putting them in their true form. " Paragraph (c) of the same article stipulates that: c. The authority may redistribute revenue and expenses in transactions between related parties or parties affiliated with the same entity to reflect the revenue that would have been achieved if the parties were independent and unrelated.", and based on the provisions of paragraph (11) of Article (10) of the Executive Regulations of the Income Tax



Law, which stipulates that: "The following expenses may not be deducted: 11-The value of the materials supplied or the value of the services provided by parties associated with the Taxpayer in excess of the prices used between independent parties. The Authority shall issue rules for determining fair prices for transactions between related parties in accordance with internationally recognized standards." Paragraph (b) of Article (13) of the Income Tax Law stipulates that: "The following expenses may not be deducted: b. Any amounts paid or benefits provided to the shareholder or partner or to any relative of them if they represent salaries, wages, bonuses and the like, or if they do not meet the conditions for transactions between independent parties, in exchange for property or services. - The instructions for pricing transactions issued by the Board of Directors of the General Authority for Zakat and Tax No. (6-1-19) dated 25/05/1440 AH corresponding to 31/01/2019 AD stipulated in paragraph (b) and (c) of Article 4 related to the different terms of transactions between related persons from the terms of similar transactions between independent persons: b. If the terms or proceeds of transactions between related persons differ from the terms or proceeds of a similar transaction between independent persons, the Authority may take one of the following actions: Direct one or more persons related to the transaction to adjust their tax base to include the revenue that these persons would have received if the terms were not different. Redistribute or disallow the results of transactions between related persons to reflect what would have resulted from similar transactions between independent persons. c. The Authority shall be responsible for the application and interpretation of these Instructions and for determining whether transactions between related persons conform to the principle of price neutrality or not in accordance with the provisions of these Instructions." Article (7) of the Transaction Pricing Instructions related to the methods of pricing transactions based on: A- The methods of pricing the approved transactions for the purposes of Article 6 of these instructions are as follows: 1 Comparative Price Method: A comparison is made between the specified price of the property or services transferred in a transaction between related persons and the price charged for the property or services transferred in a similar independent transaction. 2 Resale Price Method: Through which a comparison is made between the margin achieved by the buyer of the property in a transaction between related persons from the process of reselling these properties in a separate transaction with the margin that investigates similar transactions and resale between independent persons. 3 Total cost plus profit margin method: It compares the profit margin of costs incurred directly and indirectly in the supply of property and services under a transaction between related persons with the profit margin of costs incurred directly or indirectly in the supply of property or the provision of services under a separate and similar transaction. 4 Transaction Net Margin Method: Through which a comparison is made between the net profit margin related to an appropriate basis (e.g. costs, sales, assets) obtained by a person in a transaction between related persons and the net profit margin related to the same basis in separate comparable transactions. 5 Dividend method: It allocates to each related person involved in a transaction between related persons a portion of the joint profits (or losses) resulting from that transaction between related persons that the independent person obtains or expects to obtain from a comparable independent





transaction. When the financial remuneration for the functions performed by the related person in relation to a transaction between related persons is determined on the basis of the neutral price using one of the approved methods, the method of dividing the profits based on the joint profits remaining after the payment of the remuneration for these functions shall be applied. (b) In general, none of the methods mentioned in paragraph (a) of this article shall have any preference in application, and the Authority has the right to issue and establish controls with regard to determining the method of pricing the appropriate transactions in the guidebook. "Article (12) of the Pricing Instructions related to settlements and amendments by the Authority stipulates: (a) The authority may not make an amendment or settlement to a transaction between related persons or consolidated transactions in accordance with the provisions of article 10 of these instructions if the authority considers that the financial indicator derived from those transactions, which has been documented based on the method of pricing the appropriate transactions in accordance with the provisions of chapter four of these instructions, falls within the neutral price range. (b) The authority may amend the financial indicator if the financial indicator derived from the transaction between related persons or from consolidated transactions falls outside the neutral price range, provided that the financial indicator is adjusted to reflect the characteristics and circumstances of the case with the greatest accuracy and falls within the neutral price range." Article (15) of the Pricing Instructions related to General Obligations stipulates: (a ) The authority has the authority to request any information related to transactions between related persons that it deems necessary to perform its regulatory functions and achieve the objectives of these instructions. B- Without prejudice to what is stated in Article Nineteen: Exceptions) to these instructions, the Taxpayer who is a party to a transaction between related persons shall keep documents proving that such transactions are carried out on a price-neutral basis. (c) The Taxpayer shall maintain sufficient documents that include economic information and analysis to prove that the conditions of its intra-regional transactions are in accordance with the principle of neutral price. Such documents shall be available for review by the Authority upon request. (d) The authority shall be provided with documents relating to transactions between related persons at the request of the authority within the period specified by the authority, provided that the period is not less than thirty (30) days from the date of the request. "Article (23) of the Pricing Instructions related to the audit procedures also stipulates: "The Authority shall follow the audit rules and procedures stipulated in Article Sixty-Two of the Income Tax Law and the rules stipulated in the Manual when auditing transactions between related persons.", Clause (3.3.4) of the Transaction Pricing Guideline also stipulates that: "Search criteria and years to be covered: For purposes of normalizing data of comparable persons, the search scope must include data for three (3) consecutive years." Based on the foregoing, and where it became clear to the Circuit that the Authority's appeal is represented in that all tax and zakat regulations issued by the Authority require that the value and prices of materials or services conducted between related parties be within the range of prices used between independent parties, based on paragraph (5) of Article (6) of the Executive Regulations for Zakat Collection. The Circuit's reliance on the average profit margin of (16.38%) for the year 2018 only and its rejection for



the years 2019 AD and 2020 AD is considered unjustified. Meanwhile, the Taxpayer indicated that it becomes clear that it is necessary to use the transactional net margin method, and that the company's operating profit at (5.51%) for the financial year 2019 AD and financial year 2020 AD falls within the acceptable interquartile range, and therefore adjustment to the average would not be necessary. Accordingly, since the grounds for the dispute are due to the mismatch of the approach used in analyzing transactions between related parties, the Defendant used the transfer pricing method (arm's length or comparable) and the Defendant made adjustments to the local file submitted by the Taxpayer. Since the Taxpayer's activity does not comply with the method used, the transactional net margin method was chosen. The Authority submitted a transfer pricing report, benchmarking study, followed search criteria, and accepted companies to determine the percentage (Excel file attached), which showed that the Authority conducted its analysis and added companies suitable for comparison with the Taxpayer. It accepted (8) companies and took the average as a profit margin of (16.38%), while the Taxpayer did not provide documents related to transfer pricing and did not provide details of its transactions with related parties and their amounts. Therefore, it becomes clear that using the average profit of (16.38%) in determining transfer pricing policy is the most appropriate application in the years in dispute. In addition to that, it is clear that what the Resolution decision concluded regarding amending the Authority's procedure in assessing the Taxpayer at (5.51%) for the years 2019 AD and 2020 AD is incorrect, without clarifying the basis for the amendment or its justifications, especially since the decision supported the Authority's procedure in assessing the Taxpayer at (16.38%) for the year 2018 AD only. This leads the Circuit to partially accept the Authority's appeal and amend the Adjudication Circuit's decision on this clause.

With regard to the Taxpayer's appeal on the clause (delay fine), and where the Taxpayer's appeal lies in that the delay fines must be applied from the date of the issuance of the final decision on the dispute, and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, which includes delays in paying the tax required for withholding and accelerated payments, calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment ." based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law: "Unpaid tax means the difference between what the Taxpayer paid on the regular date, and the tax payable under the provisions of the Law. It includes the amendments made by the Authority, which have become final as stated in paragraph (2) of Article Seventy-one of these Regulations, including the cases objected to, where the fine is calculated from the date of the regular date of submission of the declaration and payment." Based on the

foregoing, it is clear from the above statutory texts that the delay fine is calculated from the date a tax is due on the Taxpayer until the date of payment. However, by informing the Circuit of the case file, it is clear that the unpaid due tax resulted from amendments to clauses that are not governed by clear statutory texts, and it was found after referring to the case file and as indicated by the Taxpayer in its appeal statement that it benefited from the exemption initiative submitted by the Zakat, Tax and Customs Authority on June 1, 2022 AD, and therefore the settlement of the basic amount of taxes, including

with regard to the Taxpayer's and the Authority's appeal on the remaining clauses, the Circuit has no fault in adopting the grounds for the decision under appeal without adding to them when it assesses that these grounds make it unnecessary to introduce anything new, because in supporting them with the content of these grounds, it is certain that it did not find any objections to the decision that merit a response beyond what is contained in these grounds as the issuing Circuit scrutinized the dispute and reached the conclusion it reached in its operative part, and as this Circuit did not observe any reason to appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject the appeal of the Taxpayer and the Authority and uphold the decision of the Adjudication Circuit in its conclusion on the remaining clauses, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

1- Acceptance of the appeal procedurally by the Taxpayer/ ... company Commercial Registration No. (...), unique number (...), and the Zakat, Tax and Customs Authority, against the decision of the Third Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (ITR-2023-400) issued in Case No. (I -2021- 89528) related to the tax assessment for the years from 2017 AD to 2019 AD.

2- On the merits:

(A) Rejecting the Taxpayer's appeal and endorsing the decision of the Circuit of Adjudication regarding the clause (duplication of the adjustment of revenues for the years ending on 30 April 2018 AD and up to 30 April 2020 AD).

(B) Accepting the Authority's appeal in part and amending the decision of the Adjudication Circuit and rejecting the Taxpayer's appeal regarding the clause (pricing of transactions for the years ending on 30 April 2018 AD and until 30 April 2020 AD).

(C) Accepting the appeal of the partially Taxpayer, amending the decision of the Adjudication Circuit, and rejecting the appeal of the Authority with regard to the clause (delay fine).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-171167

Case No. W-2023-171167

### Keywords

Income Tax - Tax Accounting Rules — Settlement of Accounts - Acceptance of Taxpayer Appeal

### Summary:

The Taxpayer's objection to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-2252), where the Taxpayer's appeal against the clause (payments of letters of credit) lies in the fact that the financing provided by the sister company in Lebanon to open a letter of credit to them and that the company paid the principal amount and there is no consideration for this financing (interest), and in the clause (settlement for 2018 AD) on the Authority's subjection of the settlement of accounts to withholding tax and that the amounts are related to payment to a local supplier on behalf of the sister company, and in the clause (delay fine) that the fine is assessment ed to the existence and non-existence of acceptance or rejection of the relevant clause. Whereas it was proven to the Appeal Committee regarding the payments of letters of credit that the Taxpayer did not bear any interest or additional cost and that the Authority did not provide proof of the Taxpayer's bearing the returns or interest of the loans, and with regard to the settlement amounts, it was not clarified ... The nature of the relationship of the related parties in one amount without the other amounts, and with regard to the delay fine that the fine is assessment ed to the existence and non-existence of acceptance or rejection of the relevant clause. The effect of this is to accept the appeal of the person in charge of the clause of payments of letters of credit and partially accept it in the terms of settlement and delay fine.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (5) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (a) of Article (77) of [The Income Tax Law issued by Royal Decree No. \(M/1\) dated 15/01/1425AH.](#)



- Article (63) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Paragraph (3) of Article (67) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)
- Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision of the Minister of Finance No. \(1535\) dated 11/06/1425AH](#)

### Facts:



The submitted appeal was heard on: /01/24/2023, of/ (...), National ID No. (...) as an agent for the appellant company under agency No. (...), on the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (IFR-2022-2252) issued in Case No. (W-2021-68600) regarding the Zakat fees for the years 2016 AD, 2017 AD and 2018 AD, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

First: Defendant/Zakat, Tax and Customs Authority's decision against the Plaintiff is overturned/ ..... Unique number (...). Related to the withholding tax clause at a rate of (15%), unlike the works in progress in the subject matter of the lawsuit.

Secondly: Plaintiff's other objections are dismissed/(.....) Unique number (...). on the decisions of the Defendant/Zakat, Tax and Customs Authority regarding the assessment at issue.

Since this decision was not accepted by the Taxpayer (...), he submitted an appeal petition which the Circuit reviewed, where the Taxpayer's appeal concerns the clause (letter of credit payments). The Taxpayer clarified that the Authority subjected letter of credit payments to withholding tax, where the company provided several supporting documents for this clause such as the auditor's report clarifying the nature of transactions related to letter of credit payments that were made with company (...), and letters of credit issued by the bank for each transaction, and confirmation statement from local suppliers, and invoices issued by local suppliers that support the purchases, and a detailed statement showing details of documentary credit amounts, suppliers, related invoices, payment dates, and amounts for each transaction. These submitted documents are sufficient to prove that the company paid the principal amount and there is no consideration for this financing (interest). He indicated that the company entered into a turnkey project with company (...), where within the scope of work, mobile network towers were supplied and installed. Since the project was of great value and the tower supply included huge investments, (...) company for contracting and technology agreed with tower supplier and other material/goods suppliers to open a "Letter of Credit" for them and the suppliers agreed to this. Since the company (...) Contracting and Technology did not have any banking facilities in the Kingdom of Saudi Arabia, the company has agreed with its sister company in Lebanon, a company (...) Which has good banking facilities from banks in Lebanon to open a

letter of credit from Lebanese banks to local material/goods suppliers in Saudi Arabia. Accordingly, (Lebanese sister company) opened a letter of credit to all suppliers and agreed to make payments on behalf of (...) Contracting & Technology. Later, the company (...) For contracting and Technology Invoices from local suppliers When payments are made through the letter of credit, the company settles the local suppliers with a credit balance of (...), and upon collection from the company (...) The value of the invoices of local suppliers shall be settled with the account of the relevant authority (...) at the cost price, and the company shall not bear or pay any interest to the non-resident entity as indicated in the agreement. In addition, the company has provided the authority with a full series of transactions starting from the purchase order from the company (...), and L/C documents for local suppliers along with invoices and statement of accounts, in addition to debit notes from (...) to LC payments. With regard to the Taxpayer's appeal on the clause (settlement for 2018), the Taxpayer explained that the Authority subject the settlement of accounts to withholding tax, as this movement in the trial balance is a corresponding restriction for the reclassification of accounts and the movements of the credit balance from supply accounts. This was just a reclassification of balances from supply accounts using the corresponding entries, by transferring balances of SAR (1,305,776.21) from account No. (...) To Account No. (...) And a balance of (406,965) Saudi riyals from account No. (...) To Account No. (...), to pay a local supplier on behalf of (...) The amount of (31,772.90) Saudi riyals and the payment of visit visa stamp fees in the amount of (4,500) Saudi riyals according to the trial balance and the movement of related parties presented. Documents supporting this credit balance for the supply of goods have been previously submitted to the Authority. With regard to the Taxpayer's appeal on the clause (delay fine), the Taxpayer stated that the Authority imposed a delay fine on the unpaid tax differences on the regular date based on paragraph (a) of Article (77) of the Income Tax Law. Whereas, it explained that the matters discussed above are the subject of a technical dispute between the Taxpayer and the Authority, and therefore any additional withholding tax arising from it must not be subject to the delay fine, and therefore the Taxpayer is required to accept its appeal and reverse the decision of the Adjudication Circuit on the clauses subject to appeal.

on Wednesday, 28/02/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes met via video conferencing in accordance with the procedures for remote video litigation, based on the provisions of Article 15, Clause 2 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit did not find it necessary for the parties to the appeal to be present, the Circuit decided to close the pleadings and reserve the case for adjudication.

The submitted appeal was heard on: /01/242023 AD, of/ (...), National ID No. (...) as an agent for the appellant company under agency No. (...), on the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (IFR-2022-2252) issued in Case No. (W-2021-68600) regarding the

Zakat fees for the years 2016 AD, 2017 AD and 2018 AD, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

First: Defendant/Zakat, Tax and Customs Authority's decision against the Plaintiff is overturned/ ..... Unique number (...). Related to the withholding tax clause at a rate of (15%), unlike the works in progress in the subject matter of the lawsuit.

Secondly: Plaintiff's other objections are dismissed/(.....) Unique number (...). on the decisions of the Defendant/Zakat, Tax and Customs Authority regarding the assessment at issue.

Since this decision was not accepted by the Taxpayer (...), he submitted an appeal petition which the Circuit reviewed, where the Taxpayer's appeal concerns the clause (letter of credit payments). The Taxpayer clarified that the Authority subjected letter of credit payments to withholding tax, where the company provided several supporting documents for this clause such as the auditor's report clarifying the nature of transactions related to letter of credit payments that were made with company (...), and letters of credit issued by the bank for each transaction, and confirmation statement from local suppliers, and invoices issued by local suppliers that support the purchases, and a detailed statement showing details of documentary credit amounts, suppliers, related invoices, payment dates, and amounts for each transaction. These submitted documents are sufficient to prove that the company paid the principal amount and there is no consideration for this financing (interest). He indicated that the company entered into a turnkey project with company (...), where within the scope of work, mobile network towers were supplied and installed. Since the project was of great value and the tower supply included huge investments, (...) company for contracting and technology agreed with tower supplier and other material/goods suppliers to open a "Letter of Credit" for them and the suppliers agreed to this. Since the company (...) Contracting and Technology did not have any banking facilities in the Kingdom of Saudi Arabia, the company has agreed with its sister company in Lebanon, a company (...) that has good banking facilities from banks in Lebanon to open a letter of credit from Lebanese banks to local suppliers of materials/goods in Saudi Arabia. Accordingly, I opened (...) Letter of Credit for all suppliers and agreed to make payments on behalf of (...) Contracting & Technology. Later, the company (...) Contracting and Technology has invoices from local suppliers and when payments are made through the letter of credit, the company settles the local suppliers with a credit balance (...), and upon collection from the company (...) The value of the invoices of local suppliers shall be settled with the account of the relevant authority (...) At the cost price, the Company shall not bear or pay any interest to the non-resident entity as indicated in the Agreement. In addition, the Company has provided the Authority with a complete series of transactions starting from the purchase order from (...) Company, and the letter of credit documents for local suppliers along with invoices and statement of accounts, in addition to the debit notes from (...) to LC payments. With regard to the Taxpayer's appeal on the clause (settlement for 2018), the Taxpayer explained that the Authority subject the settlement of accounts to withholding tax, as this movement in the trial balance is a corresponding restriction for the reclassification



of accounts and the movements of the credit balance from supply accounts. This was just a reclassification of balances from supply accounts using the corresponding entries, by transferring balances of SAR (1,305,776.21) from account No. (...) To Account No. (...) And a balance of (406,965) Saudi riyals from account No. (...) To Account No. (...), to pay a local supplier on behalf of Company (...) The amount of (31,772.90) Saudi riyals and the payment of visit visa stamp fees in the amount of (4,500) Saudi riyals according to the trial balance and the movement of related parties presented. Documents supporting this credit balance for the supply of goods have been previously submitted to the Authority. With regard to the Taxpayer's appeal on the clause (delay fine), the Taxpayer stated that the Authority imposed a delay fine on the unpaid tax differences on the regular date based on paragraph (a) of Article (77) of the Income Tax Law. Whereas, it explained that the matters discussed above are the subject of a technical dispute between the Taxpayer and the Authority, and therefore any additional withholding tax arising from it must not be subject to the delay fine, and therefore the Taxpayer is required to accept its appeal and reverse the decision of the Adjudication Circuit on the clauses subject to appeal.

on Wednesday, 28/02/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes met via video conferencing in accordance with the procedures for remote video litigation, based on the provisions of Article 15, Clause 2 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit did not find it necessary for the parties to the appeal to be present, the Circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and with regard to the Taxpayer's appeal on the clause (payments of letters of credit), where the Taxpayer's appeal lies on the financing provided by the sister company in Lebanon (Company (...)) to open a letter of credit for them. Based on paragraph (a) of Article Sixty-Eight of the Income Tax Law, which stipulates: "A. Every resident, whether Taxpayer or non-Taxpayer under this Law, and the permanent establishment in the Kingdom of a non-resident, who pays an amount to a non-resident from a source in the Kingdom must withhold tax from the amount paid in accordance with the following rates: Loan yields (5%) ". Based on paragraph No. (1) of Article (63) of the Executive Regulations of the Income Tax Law, which states: "A non-resident shall be subject to tax on any amount obtained from any source in the Kingdom, and



the tax shall be deducted from the total amount according to the following prices: Loan yields (5%) ". Based on the above, it becomes clear that the Taxpayer's appeal on the financing provided by the sister company in Lebanon is a company (...) for the assignee to open a letter of credit for them. Accordingly, I opened (...) Letter of credit for all suppliers and agreed to make payments on behalf of (...) Contracting & Technology. The Taxpayer settles the local suppliers with a credit balance for me (...) Upon collection from the company (...), the value of the invoices of the local suppliers shall be settled with the account of the relevant authority (...) At cost. Accordingly, by reviewing the documents submitted, it is clear that the Taxpayer submitted the financing agreement with the sister company and by reviewing Article No. (7), which stipulates that "the loan financed by (...) shall be repaid upon receipt of payments from customers at the cost at which the same invoice was issued by the local supplier without adding interest to the lending party." Accordingly, it is clear that the Taxpayer did not bear any interest or additional cost, and since the withholding tax is imposed only on the returns of loans, and where the Taxpayer proved that the financing is at cost, which shows that the Authority is not entitled to impose the withholding tax, and since the Authority did not provide evidence that the Taxpayer bears the returns or interest of the loans. (the Taxpayer), resulting in the Circuit's decision to accept the Taxpayer's appeal and annul the decision of the Adjudication Circuit on this clause.

With regard to the Taxpayer's appeal on the clause (Settlement for the year 2018 AD), where the Taxpayer's appeal lies on the Authority subjecting the settlement of accounts to withholding tax. Article No. (68) of the Income Tax Law stipulates that: "Every resident, whether expensive or not, under this Law, and the permanent establishment in the Kingdom of a non-resident, and the natural person, who pays an amount to a non-resident from a source in the Kingdom, shall deduct a tax from the amount paid." Based on paragraph (3) of Article (57) of the Executive Regulations of Income Tax, which stipulates the following: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the above, it is clear that the Authority has imposed withholding tax on settlements because the Taxpayer has not clarified the amounts paid to non-resident companies and whether they are in return for services provided inside the Kingdom or not. While the Taxpayer explained that the amounts are related to the payment to a local supplier on behalf of the sister company and the payment of the visit visa stamping fees and the reclassification of accounts by transferring them from one account to another. Accordingly, by reviewing the case file and the documents submitted, it becomes clear that the Taxpayer submitted a debit note (Appendix 16\_p 12,13), from which it became clear that the amount of (31,772.90) riyals related to a payment to a local supplier, and also submitted a debit note in the amount of (4.500) riyals to pay a visa fee on it, which is not subject to withholding tax. As for the remaining amount, the Taxpayer did not provide a breakdown of the nature of the amounts, although there were services provided, as it only submitted the trial balance and daily entries, which did not clarify the

nature of the relationship of the related parties. The matter with which the Circuit ends up partially accepting the Taxpayer's appeal and amending the decision of the Adjudication Circuit to deduct an amount of (36,272.20) riyals.

with regard to the Taxpayer's and the Authority's appeal on the (delay fine) clause, and based on the text of paragraph (a) of Article 77 of the Income Tax Law promulgated by Royal Decree No. M/1 dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: B- Delay in paying the tax due under the Authority's assessment " Based on the foregoing, and by reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the dispute between the two parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the statutory texts, and since the fine is assessment ed to the existence and non-existence of acceptance or rejection of the clause related to it, and therefore the Circuit ends up partially accepting the Taxpayer's appeal on this clause and amending the decision of the Adjudication Circuit regarding the delay fine by dropping the fine from the clauses in which the taxp's appeal was accepted due to the loss of its origin, and the validity of imposing fines on the clauses in which the appeal was rejected to prove its origin.

with regard to the Taxpayer's appeal regarding the remaining clauses at issue in the case, the Circuit is not faulted for adopting the grounds for the decision under appeal without adding to them when it assesses that these grounds make it unnecessary to introduce anything new, because in supporting the decision with the content of these grounds, it is certain that it did not find any objections to the decision that merit a response beyond what is contained in these grounds as the issuing Circuit scrutinized the dispute and reached the conclusion it reached in its operative part, and as this Circuit did not observe any reason to appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject the Taxpayer's appeal and uphold the decision of the Adjudication Circuit with respect to the outcome it reached on the clauses at issue in the case, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:



### Decision:

First: Accept the appeal procedurally from the Taxpayer/company (...) Contracting and Technology, Commercial Register ((...)), unique number (...) Against the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-2252) issued in Case No. (W-2021-68600) related to the tax assessment for the years 2016,2017,2018.

Second: On the merits:

1- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (payments of letters of credit).

2- With regard to the Taxpayer's appeal on the clause (account settlements):

(A) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the settlement for the year 2017 AD.

(B) Accepting the appeal of the partially Taxpayer and amending the decision of the Adjudication Circuit in relation to (the 2018 AD settlement clause).

3- accepting the Taxpayer's appeal in part and amending the decision of the Adjudication Circuit with regard to the delay fine clause.

This decision is considered final according to the provisions of Articles 47 and 48 of the rules of operation of the committees for adjudicating tax violations and disputes.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-167908

Case No. I-2023-167908

### Keywords

Income tax - Tax accounting rules - Restatement of financial statements - Acceptance of the Authority's appeal - Partially accepting the Taxpayer's appeal

### Summary:

The Taxpayer's and the Zakat, Tax and Customs Authority's objection to the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Dammam city number (IZD-2022-2398), where the Authority's appeal lies on the clause (re-inclusion of audited financial statements for years prior to 2015 AD) in that the Taxpayer states that when preparing the financial statements for 2016 AD, it noticed unintentional errors related to the previous years of 2014 AD and 2015 AD, and in order to correct those errors, it made required adjustments to revenues and costs for the mentioned years. Regarding the clause (carried forward losses), the Authority conducted an assessment on the Taxpayer concerning the year 2015 AD based on the audit report, where it became clear that there are no losses carried forward from years prior to 2015 AD. The Taxpayer's appeal lies on the clause (late payment penalty) in that the purpose of imposing a late payment penalty is in case of delay in paying the due tax that has become final as a result of the Taxpayer's acceptance of the assessment or the completion of objection and appeal procedures. Whereas, it has been proven to the Appeal Committee regarding the clause (Re-entry of the audited financial statements for previous years) that the Authority has requested the Taxpayer to submit the supporting documents for the amendments in revenues/ costs, and the daily entries to prove these amendments, but the Taxpayer only submitted a clarification without providing the accounting treatment, and in the clause (losses carried forward) that there are no losses from the years preceding 2015, and since the Taxpayer claims to take the accumulated stage loss in the financial statements based on the report of the chartered accountant, and this is contrary to what was stipulated in the tax regulations. Consequently, the Authority's appeal is accepted, and the Taxpayer's appeal is partially accepted.



## Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (12) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Article (70) of [The Sharia Pleadings Law issued by Royal Decree No. \(M/1\) dated 22/01/1435AH.](#)
- Paragraph (a) of Article (77) of [The income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (1) of Article (9) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH](#)
- Paragraph (11) of Article (10) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH](#)

## Facts:

The appeal submitted on 05/01/2023 AD by/ (...), National ID No. (...), in its capacity as an agent of the appellant company under the submitted agency, and the appeal submitted on 10/01/2023 AD by/Zakat, Tax and Customs Authority, against the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2398) issued in Case No. (I-58695-2020) related to the tax assessment for the years from 2015 AD to 2017 AD, was considered in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled the following:

1- Cancel the Defendant's decision regarding the re-inclusion of the audited financial statements for the years prior to 2015 AD.

2- Cancellation of the Defendant's decision regarding the clause of external procurement differences for the years 2015 AD and 2017 AD.

3- Rejection of the Plaintiff's objection regarding the clause of realized losses in the exchange rate of foreign currency for the years 2015 AD and 2017 AD.

4-With regard to the clause of losses carried forward:

(A) Amending the Defendant's decision of 2015 AD.

(B) Rejection of the Plaintiff's objection for the year 2017 AD.

5- Cancel the Defendant's decision regarding the clause of accelerated tax payments for 2017 AD.

6- Amending the Defendant's decision regarding the delay fine clause.



this decision was not accepted by both parties both parties filed a list of appeals, which included the following:

With regard to the Taxpayer's appeal against the decision of the Adjudication Circuit, its appeal regarding the clause (delay fine) is that it does not agree with the Authority's procedure to impose a delay fine. The Taxpayer relies on Article (71), paragraph (2) of the Executive Regulations of the Income Tax Law, and since the purpose of the aforementioned regulations is to impose a delay fine in the event of delay in the payment of the due tax, which has become final as a result of the Taxpayer's acceptance of the assessment or the completion of the objection and appeal procedures, and accordingly the delay fine is imposed from the date on which the tax obligation became finally due based on the tax regulations. The Taxpayer also relies on the decisions of the Appeal Committee No. (1333) for the year 1434AH, No. (1355) for the year 1435AH and No. (1497) for the year 1436AH. The Taxpayer also objects to the clause (realized losses in the exchange rate of foreign currency) and the clause (losses carried forward for the year 2017 AD), and therefore the Taxpayer requests the reversal of the decision of the Adjudication Circuit in the clauses subject to appeal for the above grounds.

With regard to the Authority's appeal against the decision of the Adjudication Circuit, its appeal may be with regard to the clause (Re-entry of the audited financial statements for the years preceding 2015 AD) that the Taxpayer states that when preparing the financial statements for 2016 AD, it noticed inadvertent errors related to the years preceding 2014 AD and 2015 AD. In order to correct those errors, it made the required adjustments to the revenues and costs for the aforementioned years. When examining the objection and reviewing note (12) to the financial statements for 2015 AD, it became clear that the clause of prior-year adjustments (representing service fees charged by one of the related parties, the ... company (affiliated entity) pertaining to the financial year ended December 31, 2014 AD, which was not recorded in the accounting records at the time and was recorded in the current year as prior years' adjustments, noting that the fees charged to the branch are in line with the services agreement signed on 19/04/2014 AD between the two parties). Therefore, the Taxpayer's objection was rejected based on Article (Tenth) paragraph (11) of the Executive Regulations of the Income Tax Law, in addition to Article (12) of the Income Tax Law, as well as based on Article (9) paragraph (1) of the Executive Regulations of the Income Tax Law. As for what was stated in the Circuit's reasoning, the Authority responds that it is incorrect and contrary to regulatory requirements, and the Authority maintains the correctness and legality of its procedure. The Circuit that issued the decision canceled the Authority's decision, reasoning that it did not appear to it that the Authority had requested specific documents to verify the impropriety of conducting adjustments and corrections for errors that were recorded accountingly. The Authority responds that during the examination phase, it demanded the Taxpayer provide supporting documents for adjustments in revenues/costs and journal entries to prove those adjustments. However, the Taxpayer provided only clarification without providing the accounting treatment (related entries and accounts) and calculations on 17/10/1439 AH. This is based

on Article Eleven paragraph (1) of the Executive Regulations of the Income Tax Law, where the losses that are carried forward are the carried forward losses approved based on the Authority's assessments. No losses appeared in the Authority's assessment for the year 2014 AD, where the Authority's assessment resulted in adjusted profits of (165,709) riyals. In addition to that, the Taxpayer carried forward losses before adjustment with what he stated were prior years' adjustments, where he carried forward losses of (898,029) riyals, which are losses for the year ended 31/12/2014 AD, without adding any adjustments to them. The Authority provided its letter addressed to the Taxpayer to submit documents, which the Taxpayer responded to without providing supporting documents.

With regard to the clause (losses carried forward for the year 2015 AD), the Authority clarifies that it has assessed the Taxpayer with regard to the year 2015 AD, based on the inspection report, where it was found that there are no losses from the years prior to the year 2015 AD, and by studying the Taxpayer's objection, we find that it is demanding to take the accumulated carryover loss in the financial statements based on the report of the chartered accountant, and this is contrary to what was stipulated in the tax regulation, and therefore its objection was rejected in accordance with Article Twenty-One of the Income Tax Law. The Circuit canceled the Authority's decision for the year 2015 AD, causing that the Taxpayer has a previous lawsuit related to the year 2014 AD, which was issued by a decision to cancel the Authority's action in all clauses and was not appealed. The Authority replies that this is not true, as the Authority appealed against that decision in Case No. (I -2022- 154395) dated 10/10/2022 AD, which makes the Circuit's decision invalid and contrary to the statutory requirement.

With regard to the clause (delay fine), the Authority clarifies that with regard to the fine associated with the clauses accepted by the Authority, it informs the Authority to abandon its appeal with regard to the fine related to the clauses accepted by the Authority related to the procedures resulting from the Authority's appeal, according to the decision of the Adjudication Circuit in terms of the grounds and the retention of the other clauses, and with regard to the associated fine that the Authority appealed against: The Circuit issuing the decision subject to appeal amended the Authority's procedure due to its cancellation of some clauses, and since the Authority has appealed against those clauses, the Authority requests to support its procedure in accordance with its response note submitted. The Authority also objects to the clause (foreign procurement differences) and the clause (accelerated tax payments for the year 2017 AD), and therefore the Authority adheres to the validity and safety of its procedure and requests that the decision of the Adjudication Circuit on the clauses subject to appeal be overturned for the above grounds.

on Wednesday, 24/01/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via video conferencing in accordance with the procedures of remote video litigation; based on the provisions of clause no:(2) of Article Fifteen of the Rules of Work of the Committees for Adjudicating Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441 AH; after reviewing the appeal submitted by the parties to the case, and after examining the

contents of the case file, the circuit decided that the case has become ready for adjudication and issuing the decision on its subject matter, so the circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, and as for the Authority's appeal regarding the clause (Re-entry of the audited financial statements for the years preceding 2015 AD), and where its appeal lies that the Taxpayer reports that when preparing the financial statements for 2016, it noticed inadvertent errors related to the years preceding 2014 AD and 2015 AD, and in order to correct those errors, it made the required adjustments to the revenues and costs for the years mentioned above, and when studying the objection and reviewing note (12) to the financial statements for 2015 AD, it became clear that the clause of prior years' adjustments (representing service fees charged by one of the related parties, the ... company (Affiliate) for the fiscal year ended 31 December 2014 AD, which was not recorded in the accounting records at the time and was recorded in the current year as prior years' settlements, knowing that the fees charged to the branch are in line with the service agreement signed on 19/04/2014 AD between the two parties), so the Taxpayer's objection was rejected. Whereas Article (10) Paragraph (11) of the Executive Regulations of the Income Tax Law stipulates that expenses that may not be deducted: "The value of the materials supplied or the value of the services provided by parties associated with the Taxpayer in excess of the prices used between independent parties." Whereas Article (12) of the Income Tax Law stipulates: "Expenses associated with earning: All ordinary and necessary expenses for the achievement of taxable income, whether paid or due, incurred during the tax year are deductible expenses when calculating the tax base, with the exception of any expenses of a capital nature, and other expenses that are not deductible under Article Thirteen of this Law, and other provisions of this Chapter." Article (9), paragraph (1) of the Executive Regulations of the Income Tax Law stipulates that the expenses that may be deducted to determine taxable income are all ordinary and necessary expenses to achieve taxable income, whether paid or due, provided that the following controls are met: It must be an actual expense supported by documentary evidence or other proof that enables the authority to verify its validity. It should be related to the tax year. not be capitalist in nature. be related to the realization of taxable income.". Accordingly, and since the decision in question ended with the cancellation of the Authority's procedure on the basis that it did not appear that the Authority had requested certain documents to verify the impropriety of the adjustments and amendments for the errors that were recorded in the accounting, and by reviewing the Appeal of the Supplementary Authority, it was



found that the Authority had requested the Taxpayer to submit the supporting documents for the amendments in revenues/ costs, and the daily entries to prove those amendments, but the Taxpayer only submitted a clarification without submitting the accounting treatment (related entries and accounts) and calculation on 17/10/1439 AH, as the Taxpayer responded to it without submitting the supporting documents, and since the Taxpayer did not submit the supporting documents required of it, which ends with the Circuit accepting the Authority's appeal and canceling the decision of the Adjudication Circuit in this clause.

Whereas, regarding the Authority's appeal regarding the clause (Foreign Procurement Differences) and the clause (Accelerated Tax Payments for 2017 AD), and whereas Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the lawsuit is set, the content of the lawsuit and the answer must be monitored before the agreement is recorded, taking into account that the origin of the lawsuit is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or circuit, provided that the merits of the lawsuit or some of it is among those agreed upon." Based on the above, and where it has been proven to this Circuit the Authority's request to leave the appeal as stated in the letter issued by it in the supplementary appeal list submitted on December 24, 2023 AD, which includes: Second: Regarding the Authority's appeal against the Circuit's decision in Clause (Second) of its decision to cancel the Authority's decision related to the clause of external procurement differences for the years 2015 AD and 2017 AD: The esteemed Authority informs the Circuit of the abandonment of its appeal in relation to the above decision related to the above clause and the procedures resulting from the Authority's appeal, according to the findings of the decision of the Adjudication Circuit in terms of the merits. Retain the other clauses. ... Fourth: Regarding the Authority's appeal against the Circuit's ruling of Clause (V) of its decision to cancel the Authority's decision related to the clause of accelerated tax payments for 2017 AD: The esteemed Authority informs the Circuit of the abandonment of its appeal in relation to the above decision related to the above clause and the procedures resulting from the Authority's appeal, according to the findings of the decision of the Adjudication Circuit in terms of the merits. Retain the other clauses.", with which the Circuit ends up accepting the abandonment of the litigation.

Whereas, with regard to the Authority's appeal on the clause (losses carried forward to 2015 AD), and where its appeal lies that it has assessment ed to the Taxpayer in respect of the year 2015 AD, based on the inspection report, where it became clear that there are no losses from the years preceding 2015 AD, and by studying the Taxpayer's objection, we find that it is demanding to take the accumulated stage loss in the financial statements based on the report of the chartered accountant, and this is contrary to what is

stipulated in the tax regulation. Whereas Article (21) of the Income Tax Law stipulates: "(a) Net operating losses may be carried forward to the tax year following the year in which the loss was realized. The carried-forward loss shall be deducted from the tax base for the following tax years until the full accumulated loss is recovered. The regulation shall specify the maximum limits allowed to be deducted annually. (b) A net operating loss is the deductions allowed under this Chapter which are in excess of the taxable income for the taxable year. (c) To calculate the net operating loss of a natural person, deductions and revenue for the activity shall be considered only." Paragraph (1) of Article (11) of the Executive Regulations of the Income Tax Law relating to the posting of losses stipulates: "The Taxpayer has the right to carry forward the adjusted operating losses, according to the controls of the law and these regulations for tax purposes, to the tax years following the year of loss by reducing the profits of the following years until the full accumulated operating losses are recovered, without being limited to a specific period, provided that the maximum allowed deduction in each tax year does not exceed (25%) of the annual profit in accordance with the Taxpayer's declaration." Based on the foregoing, and where the Authority reports that it has assessment ed the Taxpayer based on the inspection report, as it became clear that there are no rounded losses from the years prior to 2015 AD, and where the Taxpayer is claiming to take the accumulated stage loss in the financial statements based on the report of the chartered accountant, and this is contrary to what was stipulated in the tax regulation, while the decision in question ended with the cancellation of the Authority's procedure, given that the Taxpayer has a previous lawsuit related to the year 2014 AD, which was issued to cancel the Authority's procedure in all clauses and has not been appealed against, and the Authority indicated that this is not true, as the Authority appealed that decision in case No. ( I -2022- 154395) dated 10/10/2022AD, which ends with the Circuit accepting the Authority's appeal and canceling the decision of the Adjudication Circuit in this clause.

Whereas, with regard to the appeal of the parties regarding the clause (delay fine), and where the Taxpayer's appeal lies in the fact that the intention of the regulations is to impose a delay fine in the event that the payment of the due tax is delayed, which has become final as a result of the Taxpayer's acceptance of the assessment or the completion of the objection and appeal procedures, and accordingly the delay fine is imposed as of the date on which the tax obligation became finally due. While the Authority's appeal lies in that it leaves its appeal with regard to the fine related to the clauses in which the Authority left its appeal, and with regard to the associated fine that the Authority appealed against, the circuit issuing the decision subject to appeal amended the Authority's procedure due to its cancellation of some clauses, and since the Authority appealed on those clauses, the Authority demands that its procedure be supported. Whereas paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH states that: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in the payment of the tax to be withheld and accelerated payments, calculated from the date the tax is due to the date of payment." Paragraph (1) of Article 68 of the executive regulations of

the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425AH, stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b. Delay in paying the tax due under the Authority's assessment." Article 67(3) of the Executive Regulations of the Income Tax Law also stipulates: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the Law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these Regulations, including cases that are disputed, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." Based on the foregoing, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the law and the amendments made by the Authority, which ends with the Circuit partially accepting the appeal and amending the decision of the Adjudication Circuit in this clause by supporting the Circuit's decision to impose the delay fine from the due date on the clauses in which the Taxpayer's appeal was rejected and the delay fine on the clauses accepted by the Authority, and the imposition of a delay fine on the clauses in which the Authority's appeal was accepted.

regarding the Taxpayer's appeal on the remaining clauses in the case. Whereas there is no fault in the Circuit's adoption of the grounds for the contested decision without adding to them, since it deemed that those grounds were sufficient and did not require the addition of any new information, because in upholding it on the grounds set out in those grounds, it confirmed that it did not find in the objections raised against the decision anything that warranted a response beyond what was contained in those grounds. That being the case, and since it has been established that the decision under appeal in the dispute concerning the contested clauses is consistent with the valid grounds on which it is based and sufficient to support its ruling, as the Circuit that issued it examined the substance of the dispute and reached the conclusion set out in its ruling. This court did not find anything that would warrant correction or comment in light of the arguments presented before it. This court therefore rejects the appeal and upholds the decision of the Circuit of first instance in its entirety with regard to the remaining clauses of the claim, based on the grounds given.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

First: Acceptance of the appeal procedurally of the Taxpayer/ (...), commercial register (...), unique number (...), and the appeal submitted by the Zakat, Tax and Customs Authority, against the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2398) issued in Case No. (I-2020-58695) related to the tax assessment for the years from 2015 AD to 2017 AD.

Second: On the merits:



- 1- Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit regarding the clause (reinstatement of the audited financial statements for the years prior to 2015 AD).
- 2- Acceptance of the abandonment of the litigation in relation to the Authority's appeal on the clause (External Procurement Differences).
- 3- Acceptance of the abandonment of the litigation in relation to the Authority's appeal on the clause (accelerated tax payments for the year 2017 AD).
- 4- Reject the Taxpayer's appeal and support the decision of the Adjudication Circuit regarding the clause (realized losses in the foreign currency exchange rate).
- 5- Regarding the parties' appeal on the clause (losses carried forward for 2015 AD and 2017 AD):
  - (A) Accepting the Authority's appeal and canceling the decision of the Adjudication Circuit for the year 2015 AD.
  - (B) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit of 2017 AD.
- 6- Amending the decision of the Adjudication Circuit regarding the parties' appeal on the delay fine clause. This decision is considered final according to the provisions of Articles 47 and 48 of the rules of operation of the committees for adjudicating tax violations and disputes.



## Fines



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024- 170649

Case No. IW-2023-170649

### Keywords

Income Tax-Fines-Acceptance of Taxpayer Appeal

### Summary:

The Taxpayer's objection to the decision of the first circuit regarding violations and disputes of income tax in Riyadh No. (IFR-2022-2181), where its appeal lies on clause (Second/B: Whereas the Appeal Committee has established that the penalty clause is one of the clauses by association, as the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and as the dispute between the two parties is a documentary dispute, and it did not arise from a significant difference in the interpretation of the statutory texts, which requires the Circuit to amend the decision of the Adjudication Circuit to calculate the fine from the date of notifying the Taxpayer of the decision issued in this case on the clauses in which the Taxpayer's appeal was rejected, and the delay fine on the clauses in which the decision of the Adjudication Committee was canceled because of the original imposition of the tax. This means amending the decision of the Adjudication Circuit.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Paragraph (a) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (3) of Article (67) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH](#)
- Paragraph (1) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH](#)

## Facts:



the appeal filed on 18/01/2023 AD, from/... , Saudi Nationality , National Identity No. (...), in its capacity as a legitimate agent of the appellant company under the external agency attached to the case file, and the appeal submitted on 19/01/2023 AD by the Zakat, Tax and Customs Authority, against the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-2181) issued in Case No. (IW-2021-58335) related to income tax and withholding tax from 31/03/2006 AD to 30/06/2014 AD, in the case filed by the Taxpayer against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

First: the decision of the Defendant, the Zakat, Tax and Customs Authority, against the Plaintiff, ... (unique number...) Relating to the assessment after the statutory period for the years from 2006 AD to 2011 AD, the subject matter of the lawsuit.

Secondly: the decision of the Defendant, the Zakat, Tax and Customs Authority, against the Plaintiff, ... (unique number...) Related to the clause of revenues that have not been declared in the subject matter of the lawsuit.

Third: annulment of the decisions of the Defendant/Zakat, Tax and Customs Authority against the Plaintiff/... company(unique number ...) Related to the withholding tax clause in question.

Fourth: proof of termination of Plaintiff's... (unique number...) With the Defendant/Zakat, Tax and Customs Authority, related to the insurance clause that is not documentarily supported for the year 2014 AD, by the Plaintiff's acceptance of the Defendant's action in this regard.

Fifth: rejecting the other objections of the Plaintiff/... company (unique number...) on the decision of the Defendant/Zakat, Tax and Customs Authority regarding the assessment at issue.

Since this decision was not accepted by the Taxpayer (company...), it submitted an appellate brief which the Circuit reviewed and which contained in essence that the Taxpayer demands acceptance of its appeal regarding the clause (salaries and wages not documentarily supported for the years 2012 AD, 2013 AD, and 2014 AD), the clause (domestic purchases not documentarily supported for the years 2012 AD and 2013 AD), the clause (bad debts for the year 2012), and the clause (accumulated losses carried forward for the years 2011 AD and 2012 AD), where the appellant (Taxpayer) demands annulment of the Circuit's decision regarding this clause on the basis of non-entitlement to compensation for previous tax losses against taxable profits for the years 2011 AD and 2012 AD. The Taxpayer disagrees with the adjudication committee's decision that the year 2011 AD is barred by statute of limitations, and the Taxpayer clarifies that the adjudication committee's decision which indicates that the Authority's tax assessment issued for the year 2011 AD rejecting the use of carried forward losses is incorrect and has become time-barred. The Taxpayer clarifies that it has the right to deduct tax losses disclosed in previous years from net taxable profits

disclosed in its tax return, and Article (11)(1) does not refer to any assessment conducted by the Authority for that purpose. In the absence of any regulation contradicting what was mentioned above, the logical and correct interpretation is that the appellant has the right to use carried forward losses to offset net taxable profits declared by the Taxpayer (Appendix No. 8) for the years 2011 AD /2012 AD. Meanwhile, in the Defendant's (Authority's) reply, it stated that according to the provisions of paragraph (1) of Article (11) of the Executive Regulations of the Income Tax Law, the Taxpayer has the right to carry forward losses according to its declaration as per the mentioned article in the tax law, and the Authority's procedure was upheld by appellate decision number (1617) for the year 1437 AH. Therefore, the Authority maintains the correctness and soundness of its procedure and what the adjudication committee's decision concluded, and since the adjudication decision ended up upholding the Authority's procedure in this clause. and the clause (fines).

the Zakat, Tax and Customs Authority did not accept the decision, so it filed a list of appeals, which was reviewed by the circuit and included a request to accept its appeal and overturn the decision of the Adjudication Circuit.

on Wednesday, 29/05/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes held its session in the presence of all its members via video conferencing in accordance with the procedures of remote video litigation; based on the provisions of clause no:(2) of Article Fifteen of the Rules of Work of the Committees for Adjudicating Tax Violations and Disputes issued by Royal Decree No. (26040) dated 21/04/1441AH; after reviewing the appeal submitted by the parties to the case, and after examining the contents of the case file, the circuit decided that the case has become ready for adjudication and issuing the decision on its subject matter, so the circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

upon reviewing the case documents and the appeal list submitted by the Taxpayer and the Zakat, Tax and Customs Authority, the Circuit found that the conditions for considering the appeal procedurally are met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which means that the two appeals are accepted procedurally, as they were submitted by a person with standing, and within the statutory period prescribed for their submission.

On the merits, regarding the Taxpayer's appeal concerning the clause (salaries and wages not documentarily supported for the years 2012 AD, 2013 AD, and 2014 AD), the clause (domestic purchases not documentarily supported for the years 2012 AD and 2013 AD), and the Authority's appeal regarding the clause (withholding tax for the year 2014 AD), since there is no reproach upon the circuit for adopting the grounds of the contested decision without adding to them, whenever it determines that those grounds are sufficient and obviate the need for presenting anything new, because in its endorsement of them with what



those grounds contained, it is confirmed that it did not find in what was directed against the decision in terms of challenges anything that deserves a response beyond what those grounds included. Given this, and since it is established that the appealed decision regarding the dispute concerning the contested clauses came in accordance with the valid grounds upon which it was based and which are sufficient to support its ruling, as the circuit that issued it undertook to examine the core of the dispute therein and concluded regarding it with the result it reached in its operative part. Since this circuit has not observed anything that requires correction or comment regarding it in light of the defenses raised before it, this circuit concludes by rejecting the Taxpayer's appeal and rejecting the Authority's appeal and upholding the adjudication circuit's decision under appeal in the result it reached, based on its grounds.

Whereas, regarding the Authority's appeal on clause (Limitation for the years from 2006 AD to 2011 AD), and clause (Revenues not declared for the year 2014 AD), and whereas Article (70) of the Law of Sharia Pleadings issued by Royal Decree No. (M/1) dated 22/01/1435AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement takes place before the case is set, the content of the case and the answer must be monitored before the agreement is recorded, taking into account that the origin of the case is within the jurisdiction of the Circuit, even if the content of the agreement is within the jurisdiction of another court or Circuit, provided that the merits of the case or some of it is among those agreed upon." Based on the foregoing, and where this Circuit has established the Authority's request to leave the appeal as stated in the letter issued by it in the supplementary memorandum containing the following: "With regard to the Authority's appeal on an clause of revenue that was not declared for the year 2014 AD, the Authority would like to inform the esteemed Circuit to leave its appeal with regard to the above clause in particular and the procedures resulting from the Authority's appeal for this clause, according to the findings of the decision of the Adjudication Circuit in terms of the merits. The esteemed Circuital authority informs that it leaves its appeal in relation to the above clause specifically (the statute of limitations for the years 2006 AD to 2011 AD) and requests the esteemed Circuit to prove the end of the dispute accordingly", which requires the circuit to accept the abandonment of the litigation in these clauses.

Whereas, regarding the Taxpayer's appeal on the clause (bad debts for the year 2012 AD), and whereas Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. "If the agreement occurs before the seizure of the lawsuit, it is necessary to monitor the content of the lawsuit and the answer before

recording the agreement, taking into account that the origin of the lawsuit is within the jurisdiction of the circuit, even if the content of the agreement is within the jurisdiction of another court or circuit, provided that the subject of the lawsuit or some of it is among the agreed upon," and based on the foregoing, and where it is proven to this Circuit that the Taxpayer's request to prove the end of the Taxpayer's acceptance of the decision of the adjudication committee according to what is stated in its appeal list to leave the clause and not to continue the dispute on (05/09/2023 AD), which includes: "The Taxpayer agrees that it does not have documents proving that it meets the conditions for reducing bad debts stipulated in Article (9) (3) of the Executive Regulations of the Income Tax Law, so the Taxpayer does not wish to continue the dispute regarding this specific clause," which requires the Circuit to prove the end of the dispute regarding the Taxpayer's appeal on the clause (bad debts for the year 2012 AD).

Whereas, regarding the Taxpayer's appeal on the clause (accumulated losses carried forward for the years 2011 AD and 2012 AD), based on paragraphs (a, b) of Article (21) of the Income Tax Law related to the carry-over of losses, which stipulates the following: (a) Net operating losses may be carried forward to the tax year following the year in which the loss was realized. The loss carried forward from the tax base for the following tax years shall be deducted until the full accumulated loss is recovered. The regulation shall specify the maximum limits allowed to be deducted annually. B- Net operating loss is the deductions allowed under this chapter and in excess of the taxable income in the tax year ", and based on paragraph (1) of Article (11) of the Executive Regulations of the Income Tax Law related to the carry-over of losses, which stipulates the following: "The Taxpayer has the right to carry forward the adjusted operating losses, according to the controls of the law and these regulations for tax purposes, to the tax years following the year of loss by reducing the profits of the following years until the full accumulated operating losses are recovered, without limiting a specific period, provided that the maximum allowed deduction in each tax year does not exceed (25%) of the annual profit according to the Taxpayer's declaration."

Based on the foregoing, and where it is found that the Authority is not entitled to the statute of limitations in 2011 AD due to the expiry of the statutory period, as for the year 2012 AD, based on Article (11) (1) mentioned above and after reviewing the attached declaration and assessment ing the Authority, the Taxpayer made a profit in 2012 AD and the Taxpayer is required to reduce the losses carried over from 2011 AD within the range of SAR 946,069. Accordingly, the Taxpayer is entitled to deduct the tax losses formed during the previous years and declared in its tax return for 2011 AD from the net taxable profits for 2012 AD , which requires accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (accumulated losses carried over to 2011 AD and 2012 AD).

Whereas, regarding the Taxpayer's appeal on the clause (fines), and based on the text of paragraph (a) of Article (77) of the Income Tax Law issued by Royal Decree No. (M/1) dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for

every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b- Delay in paying the tax due under the Authority's assessment", and based on the text of paragraph (3) of Article (67) of the Executive Regulations of the Income Tax Law, which stipulates that "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these regulations, including cases that are contested, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment."

Based on the foregoing, and since the penalty clause is one of the clauses by association, as the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the dispute between the two parties is a documentary dispute, and it did not arise from a significant difference in the interpretation of the statutory texts, which requires the Circuit to amend the decision of the Adjudication Circuit to calculate the fine from the date of notifying the Taxpayer of the decision issued in this case on the clauses in which the Taxpayer's appeal was rejected, and the delay fine on the clauses in which the decision of the Adjudication Committee was canceled because of the original imposition of the tax.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

#### Decision:

1- Accepting the appeal procedurally from the Taxpayer / ... company Commercial registration (...), unique number (...) And the appeal submitted by the Zakat, Tax and Customs Authority, against the First Circuit's decision to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-2181) issued in Case No. (IW-2021-58335) related to income tax and withholding tax from 31/03/2006 AD to 30/06/2014 AD.

2- On the merits:

- A. Accepting the abandonment of the litigation with regard to the Authority's appeal on the clause (Limitation for the years from 2006AD to 2011 AD).
- B. Acceptance of the abandonment of the litigation in relation to the Authority's appeal on the clause (revenues not declared for the year 2014 AD).



- C. Reject the Authority's appeal and support the decision of the Adjudication Circuit regarding the clause (withholding tax for the year 2014 AD).
- D. Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause ( salaries and wages are not supported by documents for the years 2012 AD, 2013 AD and 2014 AD).
- E. Rejecting the Taxpayer's appeal and supporting the decision of the Adjudication Circuit regarding the clause (internal procurement that is not supported by documents for the years 2012 AD and 2013 AD).
- F. Proof of the end of the dispute regarding the Taxpayer's appeal on the clause (bad debts for the year 2012 AD).
- G. Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (accumulated losses carried forward for the years 2011 AD and 2012 AD).
- H. Amending the decision of the Adjudication Circuit regarding the clause (fines).



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-171167

Case No. W-2023-171167

### Keywords

Income Tax - Penalties - delay fine - Acceptance of Taxpayer Appeal – Acceptance of Partial Taxpayer Appeal

### Summary:

The Taxpayer's objection to the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-2252), where the Taxpayer's appeal against the clause (payments of letters of credit) lies in the fact that the financing provided by the sister company in Lebanon to open a letter of credit to them and that the company paid the principal amount and there is no consideration for this financing (interest), and in the clause (settlement for 2018 AD) on the Authority's subjection of the settlement of accounts to withholding tax and that the amounts relate to payment to a local supplier on behalf of the sister company and in the clause (delay fine) that the fine is assessment ed to the existence and non-existence of acceptance or rejection of the relevant clause. Whereas it was proven to the Appeal Committee regarding the payments of letters of credit that the Taxpayer did not bear any interest or additional cost and that the Authority did not provide proof of the Taxpayer's bearing the returns or interest of the loans, and with regard to the settlement amounts, it was not clarified ... The nature of the relationship of the related parties in one amount without the other amounts, and with regard to the delay fine that the fine is assessment ed to the existence and non-existence of acceptance or rejection of the relevant clause. This means accepting the Taxpayer's appeal in the clause of payments of letters of credit and partially accepting it in the two clauses of settlement and delay fine.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (5) of [The Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)



- Paragraph (a) of Article (77) of [The Income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Article (63) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH.](#)
- Paragraph (3) of Article (67) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH.](#)
- Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH.](#)

### Facts:



The submitted appeal was heard on: 24/01/2023 AD, of/ (...), National ID No. (...) as an agent for the appellant company under agency No. (...), on the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (IFR-2022-2252) issued in Case No. (W-68600-2021) regarding the Zakat fees for the years 2016 AD, 2017 AD and 2018AD, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

First: Defendant/Zakat, Tax and Customs Authority's decision against the Plaintiff is overturned/ ..... Unique number (...). Related to the withholding tax clause at a rate of (15%), unlike the works in progress in the subject matter of the lawsuit.

Secondly: Plaintiff's other objections are dismissed/(.....) Unique number (...). on the decisions of the Defendant/Zakat, Tax and Customs Authority regarding the assessment at issue.

Since this decision was not accepted by the Taxpayer (...), he submitted an appeal petition which the Circuit reviewed, where the Taxpayer's appeal concerns the clause (letter of credit payments). The Taxpayer clarified that the Authority subjected letter of credit payments to withholding tax, where the company provided several supporting documents for this clause such as the auditor's report clarifying the nature of transactions related to letter of credit payments that were made with company (...), and letters of credit issued by the bank for each transaction, and confirmation statement from local suppliers, and invoices issued by local suppliers that support the purchases, and a detailed statement showing details of documentary credit amounts, suppliers, related invoices, payment dates, and amounts for each transaction. These submitted documents are sufficient to prove that the company paid the principal amount and there is no consideration for this financing (interest). He indicated that the company entered into a turnkey project with company (...), where within the scope of work, mobile network towers were supplied and installed. Since the project was of great value and the tower supply included huge investments, (...) company for contracting and technology agreed with tower supplier and other material/goods suppliers to open a "Letter of Credit" for them and the suppliers agreed to this. Since the company (...) Contracting and Technology did

not have any banking facilities in the Kingdom of Saudi Arabia, the company has agreed with its sister company in Lebanon, a company (...) Which has good banking facilities from banks in Lebanon to open a letter of credit from Lebanese banks to local material/goods suppliers in Saudi Arabia. Accordingly, (Lebanese sister company) opened a letter of credit to all suppliers and agreed to make payments on behalf of (...) Contracting & Technology. Later, the company (...) For contracting and Technology Invoices from local suppliers When payments are made through the letter of credit, the company settles the local suppliers with a credit balance of (...), and upon collection from the company (...) The value of the invoices of local suppliers shall be settled with the account of the relevant authority (...) at the cost price, and the company shall not bear or pay any interest to the non-resident entity as indicated in the agreement. In addition, the company has provided the authority with a full series of transactions starting from the purchase order from the company (...) , and L/C documents for local suppliers along with invoices and statement of accounts, in addition to debit notes from (...) to LC payments. With regard to the Taxpayer's appeal on the clause (settlement for 2018), the Taxpayer explained that the Authority subject the settlement of accounts to withholding tax, as this movement in the trial balance is a corresponding restriction for the reclassification of accounts and the movements of the credit balance from supply accounts. This was just a reclassification of balances from supply accounts using the corresponding entries, by transferring balances of SAR (1,305,776.21) from account No. (...) To Account No. (...) And a balance of (406,965) Saudi riyals from account No. (...) To Account No. (...), to pay a local supplier on behalf of (...) The amount of (31,772.90) Saudi riyals and the payment of visit visa stamp fees in the amount of (4,500) Saudi riyals according to the trial balance and the movement of related parties presented. Documents supporting this credit balance for the supply of goods have been previously submitted to the Authority. With regard to the Taxpayer's appeal on the clause (delay fine), the Taxpayer stated that the Authority imposed a delay fine on the unpaid tax differences on the regular date based on paragraph (a) of Article (77) of the Income Tax Law. Whereas, it explained that the matters discussed above are the subject of a technical dispute between the Taxpayer and the Authority, and therefore any additional withholding tax arising from it must not be subject to the delay fine, and therefore the Taxpayer is required to accept its appeal and reverse the decision of the Adjudication Circuit on the clauses subject to appeal.

on Wednesday, 28/02/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes met via video conferencing in accordance with the procedures for remote video litigation, based on the provisions of Article 15, Clause 2 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441 AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit did not find it necessary for the parties to the appeal to be present, the Circuit decided to close the pleadings and reserve the case for adjudication.

The submitted appeal was heard on: 24/01/2023, of/ (...), National ID No. (...) as an agent for the appellant company under agency No. (...), on the decision of the Second Circuit for Adjudicating Income Tax Violations and Disputes in Riyadh (IFR-2022-2252) issued in Case No. (W-2021-68600) regarding the Zakat fees for the years 2016 AD, 2017 AD and 2018AD, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

First: Defendant/Zakat, Tax and Customs Authority's decision against the Plaintiff is overturned/ ..... Unique number (...). Related to the withholding tax clause at a rate of (15%), unlike the works in progress in the subject matter of the lawsuit.

Secondly: Plaintiff's other objections are dismissed/(.....) Unique number (...). on the decisions of the Defendant/Zakat, Tax and Customs Authority regarding the assessment at issue.

Since this decision was not accepted by the Taxpayer (...), he submitted an appeal petition which the Circuit reviewed, where the Taxpayer's appeal concerns the clause (letter of credit payments). The Taxpayer clarified that the Authority subjected letter of credit payments to withholding tax, where the company provided several supporting documents for this clause such as the auditor's report clarifying the nature of transactions related to letter of credit payments that were made with company (...), and letters of credit issued by the bank for each transaction, and confirmation statement from local suppliers, and invoices issued by local suppliers that support the purchases, and a detailed statement showing details of documentary credit amounts, suppliers, related invoices, payment dates, and amounts for each transaction. These submitted documents are sufficient to prove that the company paid the principal amount and there is no consideration for this financing (interest). He indicated that the company entered into a turnkey project with company (...), where within the scope of work, mobile network towers were supplied and installed. Since the project was of great value and the tower supply included huge investments, (...) company for contracting and technology agreed with tower supplier and other material/goods suppliers to open a "Letter of Credit" for them and the suppliers agreed to this. Since the company (...) Contracting and Technology did not have any banking facilities in the Kingdom of Saudi Arabia, the company has agreed with its sister company in Lebanon, a company (...) that has good banking facilities from banks in Lebanon to open a letter of credit from Lebanese banks to local suppliers of materials/goods in Saudi Arabia. Accordingly, I opened (...) Letter of Credit for all suppliers and agreed to make payments on behalf of (...) Contracting & Technology. Later, the company (...) Contracting and Technology has invoices from local suppliers and when payments are made through the letter of credit, the company settles the local suppliers with a credit balance (...), and upon collection from the company (...) The value of the invoices of local suppliers shall be settled with the account of the relevant authority (...) At the cost price, the Company shall not bear or pay any interest to the non-resident entity as indicated in the Agreement. In addition, the Company has provided the Authority with a complete series of transactions starting from the purchase order from (...) Company, and the letter of credit documents for local suppliers along with invoices and statement of accounts, in



addition to the debit notes from (...) to LC payments. With regard to the Taxpayer's appeal on the clause (settlement for 2018), the Taxpayer explained that the Authority subject the settlement of accounts to withholding tax, as this movement in the trial balance is a corresponding restriction for the reclassification of accounts and the movements of the credit balance from supply accounts. This was just a reclassification of balances from supply accounts using the corresponding entries, by transferring balances of SAR (1,305,776.21) from account No. (...) To Account No. (...) And a balance of (406,965) Saudi riyals from account No. (...) To Account No. (...), to pay a local supplier on behalf of Company (...) The amount of (31,772.90) Saudi riyals and the payment of visit visa stamp fees in the amount of (4,500) Saudi riyals according to the trial balance and the movement of related parties presented. Documents supporting this credit balance for the supply of goods have been previously submitted to the Authority. With regard to the Taxpayer's appeal on the clause (delay fine), the Taxpayer stated that the Authority imposed a delay fine on the unpaid tax differences on the regular date based on paragraph (a) of Article (77) of the Income Tax Law. Whereas, it explained that the matters discussed above are the subject of a technical dispute between the Taxpayer and the Authority, and therefore any additional withholding tax arising from it must not be subject to the delay fine, and therefore the Taxpayer is required to accept its appeal and reverse the decision of the Adjudication Circuit on the clauses subject to appeal.

on Wednesday, 28/02/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes met via video conferencing in accordance with the procedures for remote video litigation, based on the provisions of Article 15, Clause 2 of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441 AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit did not find it necessary for the parties to the appeal to be present, the Circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:

Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and with regard to the Taxpayer's appeal on the clause (payments of letters of credit), where the Taxpayer's appeal lies on the financing provided by the sister company in Lebanon (Company (...)) to open a letter of credit for them. Based on paragraph (a) of Article Sixty-Eight of the Income Tax Law, which stipulates: "A. Every resident, whether Taxpayer or non-Taxpayer under this Law, and the permanent establishment in the Kingdom of a non-resident, who pays an amount to a non-resident from a source in

the Kingdom must withhold tax from the amount paid in accordance with the following rates: Loan yields (5%) ". Based on paragraph No. (1) of Article (63) of the Executive Regulations of the Income Tax Law, which states: "A non-resident shall be subject to tax on any amount obtained from any source in the Kingdom, and the tax shall be deducted from the total amount according to the following prices: Loan yields (5%) ". Based on the above, it becomes clear that the Taxpayer's appeal on the financing provided by the sister company in Lebanon is a company (...) for the assignee to open a letter of credit for them. Accordingly, I opened (...) Letter of credit for all suppliers and agreed to make payments on behalf of (...) Contracting & Technology. The Taxpayer settles the local suppliers with a credit balance for me (...) Upon collection from the company (...), the value of the invoices of the local suppliers shall be settled with the account of the relevant authority (...) At cost. Accordingly, by reviewing the documents submitted, it is clear that the Taxpayer submitted the financing agreement with the sister company and by reviewing Article No. (7), which stipulates that "the loan financed by (...) shall be repaid upon receipt of payments from customers at the cost at which the same invoice was issued by the local supplier without adding interest to the lending party." Accordingly, it is clear that the Taxpayer did not bear any interest or additional cost, and since the withholding tax is imposed only on the returns of loans, and where the Taxpayer proved that the financing is at cost, which shows that the Authority is not entitled to impose the withholding tax, and since the Authority did not provide evidence that the Taxpayer bears the returns or interest of the loans. (the Taxpayer), resulting in the Circuit's decision to accept the Taxpayer's appeal and annul the decision of the Adjudication Circuit on this clause.

With regard to the Taxpayer's appeal on the clause (Settlement for the year 2018 AD), where the Taxpayer's appeal lies on the Authority subjecting the settlement of accounts to withholding tax. Article No. (68) of the Income Tax Law stipulates that: "Every resident, whether expensive or not, under this Law, and the permanent establishment in the Kingdom of a non-resident, and the natural person, who pays an amount to a non-resident from a source in the Kingdom, shall deduct a tax from the amount paid." Based on paragraph (3) of Article (57) of the Executive Regulations of Income Tax, which stipulates the following: "In the event that the Taxpayer is unable to prove the validity of the revenues, expenses and any other data contained in the Taxpayer's declaration, the Authority may, in addition to applying any other statutory sanctions, not authorize the expense that is not validated by the Taxpayer or make an estimated assessment according to the view of the Authority in light of the circumstances and facts related to the case and the information available to the Authority." Based on the above, it is clear that the Authority has imposed withholding tax on settlements because the Taxpayer has not clarified the amounts paid to non-resident companies and whether they are in return for services provided inside the Kingdom or not. While the Taxpayer explained that the amounts are related to the payment to a local supplier on behalf of the sister company and the payment of the visit visa stamping fees and the reclassification of accounts by transferring them from one account to another. Accordingly, by reviewing the case file and the documents submitted, it becomes clear that the Taxpayer submitted a debit note (Appendix 16\_p 12,13), from which it became clear that the amount of (31,772.90) riyals related to a payment to a local supplier, and also submitted a debit

note in the amount of (4.500) riyals to pay a visa fee on it, which is not subject to withholding tax. As for the remaining amount, the Taxpayer did not provide a breakdown of the nature of the amounts, although there were services provided, as it only submitted the trial balance and daily entries, which did not clarify the nature of the relationship of the related parties. The matter with which the Circuit ends up partially accepting the Taxpayer's appeal and amending the decision of the Adjudication Circuit to deduct an amount of (36,272.20) riyals.

with regard to the Taxpayer's and the Authority's appeal on the (delay fine) clause, and based on the text of paragraph (a) of Article 77 of the Income Tax Law promulgated by Royal Decree No. M/1 dated 15/01/1425 AH, which stipulates the following: "In addition to the penalties stipulated in Article 76 of this Law and in paragraph (b) of this Article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in paying the tax it is calculated from the date the tax is due to the date of payment." Based on paragraph (1) of Article (68) of the Executive Regulations of the Income Tax Law issued by Ministerial Decision No. (1535) dated 11/06/1425 AH, which stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: B- Delay in paying the tax due under the Authority's assessment " Based on the foregoing, and by reference to the case file and the defenses and documents contained therein, and since the delay fine is calculated from the date of the end of the period specified for submitting the declaration to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Authority, and since the dispute between the two parties is a documentary dispute, and did not arise from a significant difference in the interpretation of the statutory texts, and since the fine is assessment ed to the existence and non-existence of acceptance or rejection of the clause related to it, and therefore the Circuit ends up partially accepting the Taxpayer's appeal on this clause and amending the decision of the Adjudication Circuit regarding the delay fine by dropping the fine from the clauses in which the taxp's appeal was accepted due to the loss of its origin, and the validity of imposing fines on the clauses in which the appeal was rejected to prove its origin.

with regard to the Taxpayer's appeal regarding the remaining clauses at issue in the case, the Circuit is not faulted for adopting the grounds for the decision under appeal without adding to them when it assesses that these grounds make it unnecessary to introduce anything new, because in supporting the decision with the content of these grounds, it is certain that it did not find any objections to the decision that merit a response beyond what is contained in these grounds as the issuing Circuit scrutinized the dispute and reached the conclusion it reached in its operative part, and as this Circuit did not observe any reason to appeal or comment on it in light of the defenses raised before it, this Circuit concludes to reject the Taxpayer's appeal and uphold the decision of the Adjudication Circuit with respect to the outcome it reached on the clauses at issue in the case, based on the grounds for the decision.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:



### Decision:

First: Accept the appeal procedurally from the Taxpayer/company (...) Contracting and Technology, Commercial Register ((...)), unique number (...) Against the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Riyadh No. (IFR-2022-2252) issued in Case No. (W-2021-68600) related to the tax assessment for the years 2016 AD, 2017 AD, 2018 AD.

Second: On the merits:

1- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit regarding the clause (payments of letters of credit).

2- With regard to the Taxpayer's appeal on the clause (account settlements):

(A) Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the settlement for the year 2017 AD.

(B) Accepting the appeal of the partially Taxpayer and amending the decision of the Adjudication Circuit in relation to (the 2018 AD settlement clause).

3- accepting the Taxpayer's appeal in part and amending the decision of the Adjudication Circuit with regard to the delay fine clause.

This decision is considered final according to the provisions of Articles 47 and 48 of the rules of operation of the committees for adjudicating tax violations and disputes.



Appellate Committee for Tax Violations and Disputes  
First Appellate Circuit for Income Tax Violations and Disputes  
In Riyadh

Decision No. IR-2024-171420

Case No. I-2023-171420

### Keywords

Income Tax - Penalties - 1% delay for every 30 days - Acceptance of Taxpayer's appeal

### Summary:

the Taxpayer's objection to the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Dammam No. (IZD-2022-2523) regarding the 2017 income tax assessment . the Taxpayer's appeal lies on the clause (salaries and wages), the clause (double taxation), the clause (reducing the tax assessment to carryover losses), the clause (withholding tax), and the clause (delay 1% for every 30 days) on the imposition of any late penalties, non-filing penalties, or any other penalties resulting from the amended and contested assessment, as the penalties are extinguished by their origin. the Appellate Committee found that the disagreement between the two parties is well founded and did not result in a significant difference in the interpretation of the statutory provisions, which makes it clear that the Authority's action to impose the delay fine from the due date on the clauses in which the Taxpayer's appeal was rejected, and the delay fine on the clauses in which the Taxpayer's appeal was accepted, shall be forfeited due to the loss of the original imposition of the tax, is correct. Consequently: partial acceptance of the Taxpayer's appeal.

### Document:

- [Zakat, Tax and Customs Committees Regulations issued by Royal Decree No. \(25711\) dated 08/04/1445 AH.](#)
- Article (70) of [the Judicial Procedures law issued by Royal Decree No. \(M/1\) dated 22/01/1435 AH.](#)
- Paragraphs (a,b) of Article (77) of [The income Tax Law promulgated by Royal Decree No. \(M/1\) dated 15/01/1425 AH.](#)
- Paragraph (3) of Article (67) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH](#)

- Paragraph (1) of Article (68) of [The Executive Regulations of the Income Tax Law issued by Decision No. \(1535\) of the Minister of Finance dated 11/06/1425AH](#)

### Facts:



the appeal filed on 26/01/2023 AD from/... National ID number (...) as an agent for the appellant company under agency No. (...), on the decision of the First Circuit for Adjudicating Income Tax Violations and Disputes in Dammam City No. (IZD-2022-2523) issued in Case No. (I-2021-63177) related to the 2017 AD tax assessment, in the case filed by the appellant against the Zakat, Tax and Customs Authority, in which the decision of the Adjudication Circuit ruled as follows:

- 1- Rejection of the Plaintiff's objection regarding salaries and wages for the years 2017 AD and 2018 AD.
- 2- Rejection of the Plaintiff's objection regarding the double taxation of salaries and wages for the years 2017 AD and 2018 AD.
- 3- Rejection of the Plaintiff's objection regarding the clause of reducing the tax assessment with the losses carried forward for the years 2017 AD and 2018 AD.
- 4- Rejection of the Plaintiff's objection regarding the clause of withholding tax on salaries and wages paid by the head office for the years 2017 AD and 2018 AD.
- 5- Rejection of the Plaintiff's objection regarding the delay fine clause.

Whereas this decision was not accepted by the Taxpayer (branch of a ... company), submitted a list of appeals that included the following:

The Taxpayer objects to the decision of the Appealed Adjudication Circuit, noting that with regard to (all withholding tax for 2018 AD and 2017 AD and income tax for 2018) there are four cases as follows: Income tax 2017 (I-63177-2021), withholding tax 2017 AD (W-63182-2021), income tax 2018 AD (I-2021-63180), withholding tax 2018 (W-2021-63184). With regard to the delay clause (1% for every 30 days), the Taxpayer claims that it objects to the imposition of any delay fines, fines for failure to submit a declaration, or any other fines resulting from the amended and objected assessment, because the fines are forfeited by the forfeiture of their origin. The Taxpayer does not accept the imposition of an additional tax on the clauses subject to the objection and requests their cancellation. The Taxpayer also objects to the clause (salary difference in the amount of SR 189,724,294 for the year 2017 AD), the clause (double taxation of wages and salaries for the year 2017 AD) and the clause (not to reduce the tax assessment with the losses carried forward for the year 2017 AD). Accordingly, the Taxpayer demands the reversal of the decision of the Adjudication Circuit under appeal for the above grounds.

on Monday, 05/02/2024 AD, the First Appellate Circuit for Income Tax Violations and Disputes met via video conferencing in accordance with the procedures for remote video litigation; based on the provisions

of Clause No. (2) of Article Fifteen of the Rules of Work of the Tax Violations and Disputes Resolution Committees issued by Royal Decree No. (26040) and dated: 21/04/1441AH; after reviewing the appeal, after examining the contents of the case file, and after deliberating according to the law, and as the Circuit did not find it necessary for the parties to the appeal to be present, the Circuit decided to close the pleadings and reserve the case for adjudication.

### Grounds:



Upon reviewing the case documents and the appeal list submitted by the Taxpayer, the Circuit found that the conditions for considering the appeal are procedurally met in accordance with the conditions stipulated in the relevant laws, regulations and decisions, which makes the appeal request procedurally admissible because it was submitted by a competent person and within the statutory period prescribed for conducting it.

On the merits, and since (all matters related to withholding tax for the years 2018 AD and 2017 AD and income tax for the year 2018 AD), and by reviewing the Taxpayer's list submitted before the adjudication committee, it was found that it limited its objection in this case to income tax for the year 2017 AD, and since the Taxpayer did not include in its objection regarding withholding tax for the years 2018 AD and 2017 AD and income tax for the year 2018 AD, starting before the Adjudication Circuit, which ends with the circuit accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit in this clause.

Whereas, regarding the appeal of the Taxpayer regarding the clause (salary difference in the amount of SR 189,724,294 for the year 2017 AD), and whereas Article (70) of the Sharia Pleadings Law issued by Royal Decree No. (M/1) dated 22/01/1435 AH stipulates that: "The parties may request the Circuit in any case to record what they have agreed upon in acknowledgment or settlement or otherwise in the case record, and the Circuit shall issue a document to that effect," as stated in paragraph (1) of Article (70) of the executive regulations of the Sharia litigation law issued by the Minister of Justice's decision No. (39933) dated 19/05/1435 AH. If an agreement is reached before the case is settled, it is necessary to monitor the content of the case and the response before recording the agreement, taking into account that the original case must fall within the jurisdiction of the circuit, even if the content of the agreement falls under the jurisdiction of another court or circuit, provided that the subject matter of the case or part of it is among what was agreed upon." Based on the foregoing, since it has been established to this circuit that the dispute has ended through the Authority's acceptance of the Taxpayer's objection according to what was stated in the letter issued by it in the reply memorandum (2) submitted on 04/05/2023 AD, which included: "First, with regard to salaries and wages: The Authority accepts the objection of the Taxpayer in relation to the above clause, and requests your esteemed Circuit to prove the end of the dispute in relation to this clause.", with which the Circuit ends up proving the end of the dispute in this clause.

Whereas, with regard to the Taxpayer's appeal on the clause (delay 1% for every 30 days), and where its appeal lies in that it objects to the imposition of any delay fines, fines for failure to submit a declaration, or any other fines resulting from the amended and objected assessment, because the fines are forfeited by the forfeiture of their origin. paragraph (a) of Article 77 of the Income Tax Law promulgated by Royal Decree No. (M/1) dated 15/01/1425 AH stipulates the following: "In addition to the fines stipulated in Article 76 of this Law and in paragraph (b) of this article, the Taxpayer shall pay a late payment penalty of one percent (1%) of the unpaid tax for every thirty days of delay, including delays in the payment of the tax to be withheld and accelerated payments, calculated from the date the tax is due to the date of payment." Paragraph (1) of Article 68 of the executive regulations of the Income Tax Law issued by Ministerial Resolution No. (1535) dated 11/06/1425H, stipulates the following: "In addition to the fines mentioned in the previous article, 1% of the unpaid tax shall be added for every thirty days of delay in the following cases: b. Delay in paying the tax due under the Authority's assessment." Article 67(3) of the Executive Regulations of the Income Tax Law also stipulates: "Unpaid tax means the difference between the tax paid by the Taxpayer on the statutory date and the tax payable under the provisions of the Law, including the amendments made by the Circuit that have become final as stated in paragraph (2) of Article 71 of these Regulations, including cases that are disputed, where the penalty is calculated from the date of the statutory deadline for submission of the return and payment." based on the foregoing, and upon reviewing the case file and the defenses and documents it contains, and since the delay fine is calculated from the date of expiration of the deadline for filing the return to the date of payment of the due tax arising under the application of the provisions of the Law and the amendments made by the Defendant, and since the dispute between the two parties is based on a fundamental difference, and did not arise from a significant difference in the interpretation of the statutory texts the Authority's decision to impose the delay fine from the due date on the clauses in which the Taxpayer's appeal was rejected, and to waive the delay fine on the clauses in which the Taxpayer's appeal was accepted due to the loss of the original imposition of the tax, which leads the Circuit to partially accept the Taxpayer's appeal and modify the decision of the Adjudication Circuit on this clause.

Whereas, with regard to the rest of the clauses in question, and since there is no implication on the Circuit to take into account the grounds for the decision in question without adding to it whenever it deems that these grounds dispense with any new income, because in supporting them with what these grounds carried, it is confirmed with him that they did not find in the appeals against the decision what is worth responding to more than those grounds included, and since it was established that the decision in question regarding the dispute regarding the clauses in question was consistent with the justified grounds on which it was based and sufficient to carry its judiciary, as the issuing Circuit undertook the examination of the dispute and concluded with regard to it to the conclusion reached





In its operative part, and where this circuit did not notice what requires correction or comment in light of the arguments raised before it, which ends with this circuit to reject the Taxpayer's appeal and support the decision of the adjudication Circuit subject to appeal in the outcome of the rest of the clauses in question, based on its grounds.

On the basis of the above and for the grounds stated, the Circuit unanimously decided as follows:

### Decision:

1- Accepting the appeal procedurally of the Taxpayer's ... , commercial registration (...), unique number (...) Against the decision of the First Circuit to adjudicate income tax violations and disputes in the city of Dammam No. (IZD-2022-2523) issued in Case No. (I-2021-63177) related to assessment ing income tax for the year 2017 AD.

2- On the merits:

a- Accepting the Taxpayer's appeal and canceling the decision of the Adjudication Circuit in all matters related to the 2018 AD and 2017 AD withholding tax and the 2018 AD income tax.

b- Recognizing the end of the dispute regarding the Taxpayer's appeal on the payroll difference in the amount of SAR 189,724,294 for the year 2017 AD.

c- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit regarding the clause (double taxation of wages and salaries for 2017 AD).

d- Rejecting the Taxpayer's appeal and upholding the decision of the Adjudication Circuit with regard to the clause (not reducing the tax assessment to the loss carryforward for 2017 AD).

e- Accepting the Taxpayer's appeal in part and amending the decision of the Adjudication Circuit regarding the (1% delay for every 30 days) clause.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

