

# M2K UAE Knowledge Series Tax Procedures Part - II

*ALERT #13*



# PREFACE

In continuation with the discussion on the important aspects of tax procedures<sup>1</sup>, we delve into the following aspects:

- Penalties for tax crimes, Procedures, and Reconciliation
- Review of Assessment, Reconsideration, Objections, and Appeal
- Collection of Payable Tax and Administrative Penalties
- Settlement and Collection of Payable Tax and Administrative Penalties in Special Cases
- Statute of Limitation
- Miscellaneous Provisions

Recent Cabinet Decisions & Ministerial Decisions

<sup>1</sup> Federal Decree-Law No. 28 of 2022.



# Penalties for tax crimes, Procedures and Reconciliation (1/5)

**Penalties for tax crimes:** The penalties prescribed for any acts which has resulted in tax evasion or facilitating or concealing tax evasion<sup>2</sup> are as follows:

Table #1

S. No	Tax Crimes	Penalties & Consequences
1.	<p>Tax evasion through deliberate acts:</p> <ul style="list-style-type: none"><li>• failure to settle any payable tax</li><li>• understatement of actual value of business/ revenue</li><li>• failure to consolidate related businesses, with the intent of remaining below thresholds for registration, tax rates etc.</li><li>• imposing and collecting amounts as tax without relevant tax registration</li><li>• decreasing the due tax</li><li>• participation in or commission/ omission of any act constituting tax evasion</li></ul>	Prison sentence and/or monetary penalty of 100% to 300% of evaded Tax
2.	Deliberate non-settlement of a due administrative penalty (that is not waived off by the tax authorities)	Prison sentence and/or monetary penalty of 100% to 300% of administrative penalty <sup>3</sup> .

<sup>2</sup> Once it is proven that a person has participated or caused any tax crime, the penalty (prescribed above) shall be levied in accordance with Federal Decree-Law No. 31 of 2021 on the Crimes and Penalties. <sup>3</sup> The same may be waived off by the tax authorities in certain cases.

# Penalties for tax crimes, Procedures and Reconciliation (2/5)

S. No	Tax Crimes	Penalties & Consequences
3.	<p>Following deliberate acts:</p> <ul style="list-style-type: none"><li>• Providing false information, data and incorrect documents to tax authority</li><li>• Concealing or destroying documents, information, data, material required to be maintained and provided to tax authority</li><li>• Stealing or misusing or destroying documents or other materials in the possession of the tax authority</li><li>• Preventing/ hindering the tax authority's employees from performing their duties</li></ul>	<p>Prison sentence and/or monetary penalty of a maximum of AED One Million</p>



# Penalties for tax crimes, Procedures and Reconciliation (3/5)

The liability in respect of payable tax, administrative penalty and penalty for tax crimes has been determined as below:



Table #2	
Particulars	Liability
Monetary penalty (for tax crime) imposed on several accused in one judgement for one crime	Accused as jointly liable.
Payable tax and Administrative Penalties <sup>4</sup>	Everyone who has participated with the taxable person in the tax evasion crime is jointly and severally liable.

<sup>4</sup> The judgement for imposition of penalty for tax crime shall not exempt any person from the liability to settle payable tax and administrative penalties.

# Penalties for tax crimes, Procedures and Reconciliation (4/5)

## Procedures



A criminal case in respect of tax crimes may be initiated by a written request of the Director General.



The court may order for confiscation of the ceased items and funds (without prejudice to the bona fide rights of third parties), upon conviction of one of the tax crimes.



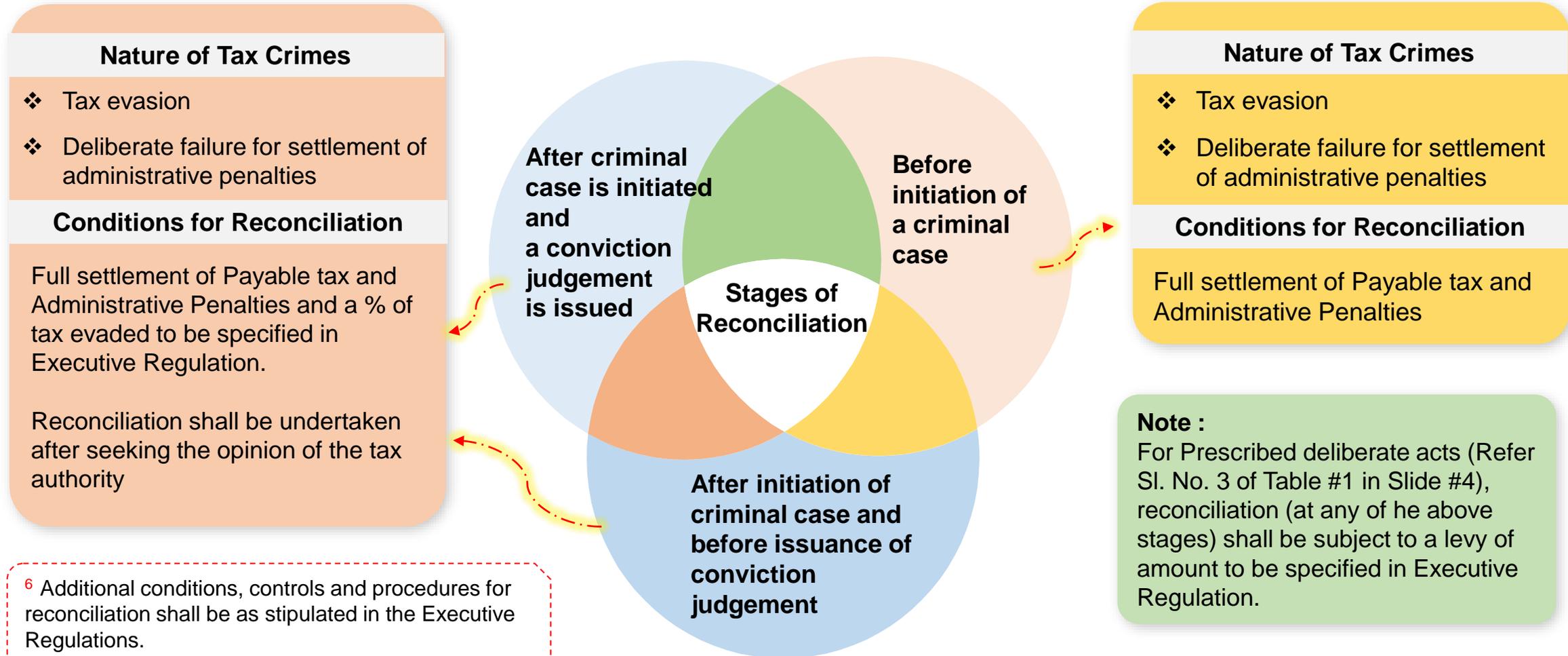
Further procedures, rights and responsibilities of the parties in relation to seizure of items have been prescribed <sup>5</sup>.



<sup>5</sup> Article 26 of the Federal Decree-Law No. 28 of 2002 read with Executive Regulations.

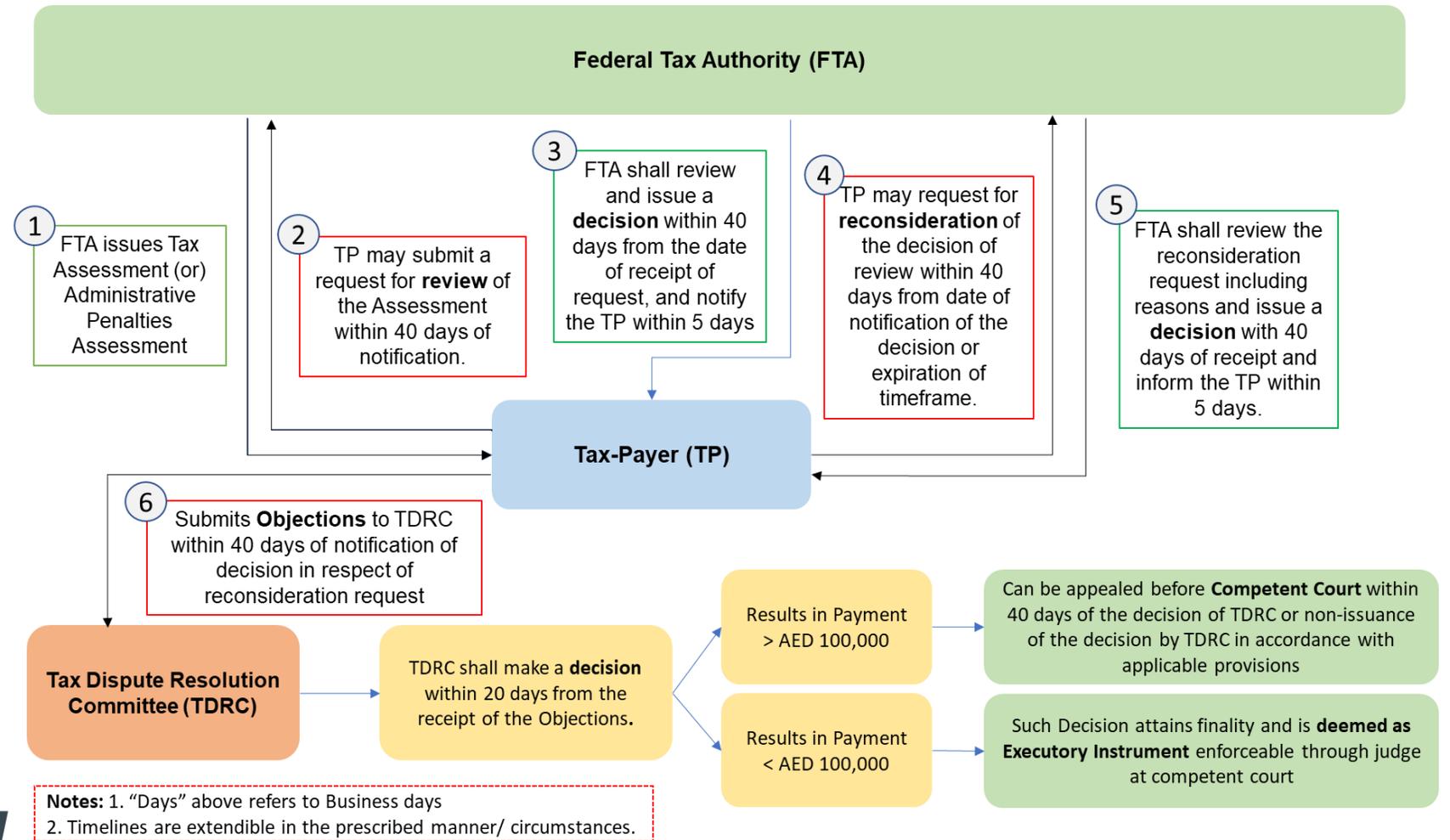
# Penalties for tax crimes, Procedures and Reconciliation (5/5)

**Reconciliation of tax evasion crimes** would result in termination of the criminal case and annulment of the consequences. The tax authorities/ the public prosecution may reconcile the tax evasion crimes at various stages of criminal case/ penal proceedings in the below manner<sup>6</sup> :



# Review of Assessment, Reconsideration, Objection and Appeal(1/2)

The Decree Law<sup>7</sup> has provided for appellate mechanisms in multiple stages in respect of an assessment of tax or administrative penalties issued by the Tax Authority. The details of the same are depicted in brief as follow:



<sup>7</sup> Federal Decree-Law No. 28 of 2022.

# Review of Assessment, Reconsideration, Objection and Appeal (2/2)

The following are key aspects to be noted:

A

The Tax Disputes Resolution Committee shall not accept the objection of the taxable person if the tax has not been paid in full.

B

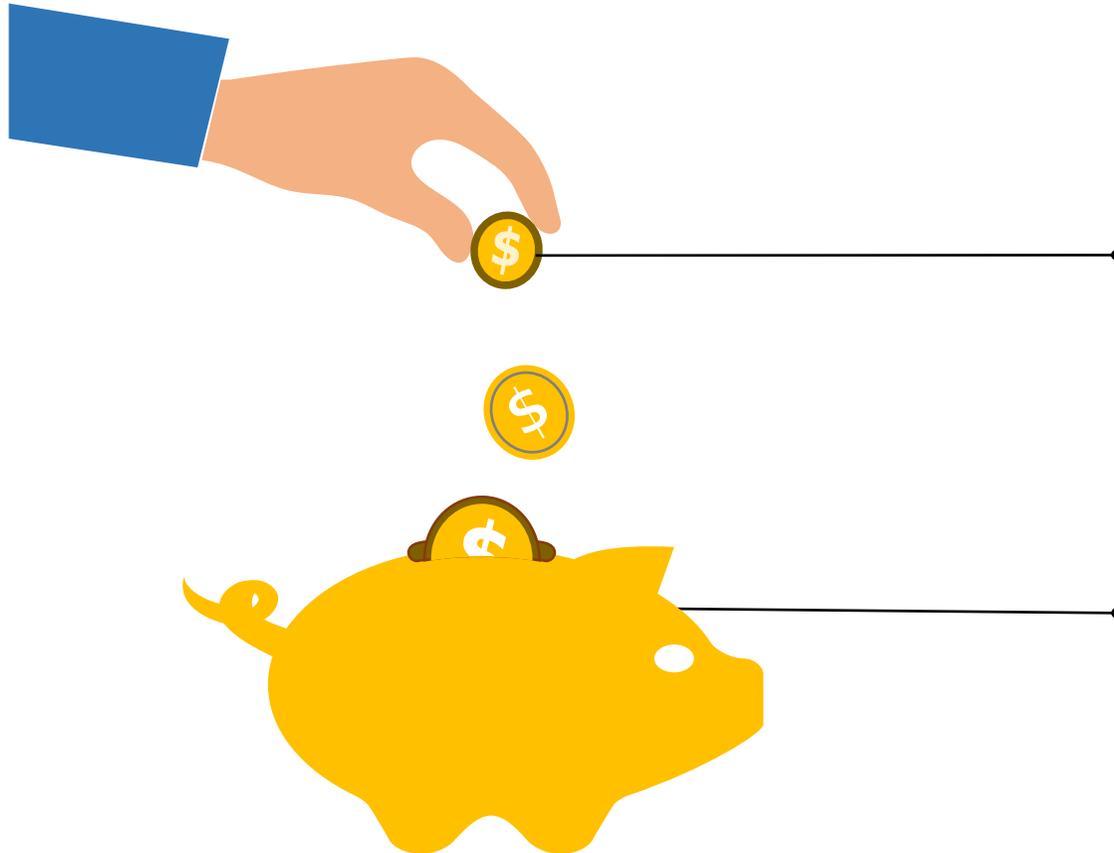
Appeal is inadmissible before the competent Court, if the proof of settlement of 100% of tax and at least 50% of administrative penalty<sup>8</sup> is not produced.



<sup>8</sup> Bank Guarantee in favour of the tax authority is also acceptable in lieu of settlement of at least 50% of administrative penalty..

# Collection of Payable Tax and Administrative Penalties

Where a taxable person has not settled payable tax and administrative penalties within specified timelines, the following procedures would be followed for collecting the same.



The tax authority shall send a notice to settle outstanding dues of tax and/or administrative penalties within 20 business days of notification.

Where the dues are still outstanding, Director General shall issue a decision obligating the person to pay the outstanding dues and communicate the same within 5 business days, which shall be an executory instrument for enforceability before competent Court.

# Settlement and Collection of Payable Tax and Administrative Penalties in Special Cases

The provisions of the Decree Law<sup>9</sup> in relation to the responsibility of Settlement of Tax & Administrative Penalty in special cases are summarized as below:

## In case of Unincorporated Partnerships

Each of the partners is jointly and severally liable.

## In case of Death of a natural person

- Payable tax due prior to the date of death or settlement: The amounts due are to be settled from the estate or income that arose prior to distribution.
- Outstanding dues after the distribution of the estate: Recourse shall be made against the heirs and legatees in certain situations.

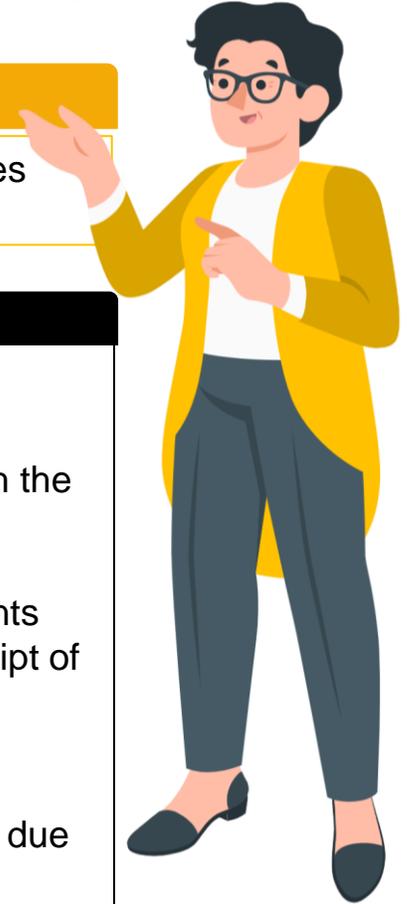
## In case of Incapacitated/ missing person

The amounts due are to be settled by the legal representatives from the funds and assets of the taxable person<sup>10</sup>.

## In case of Bankruptcy

The procedures<sup>11</sup> to be followed are as follows:

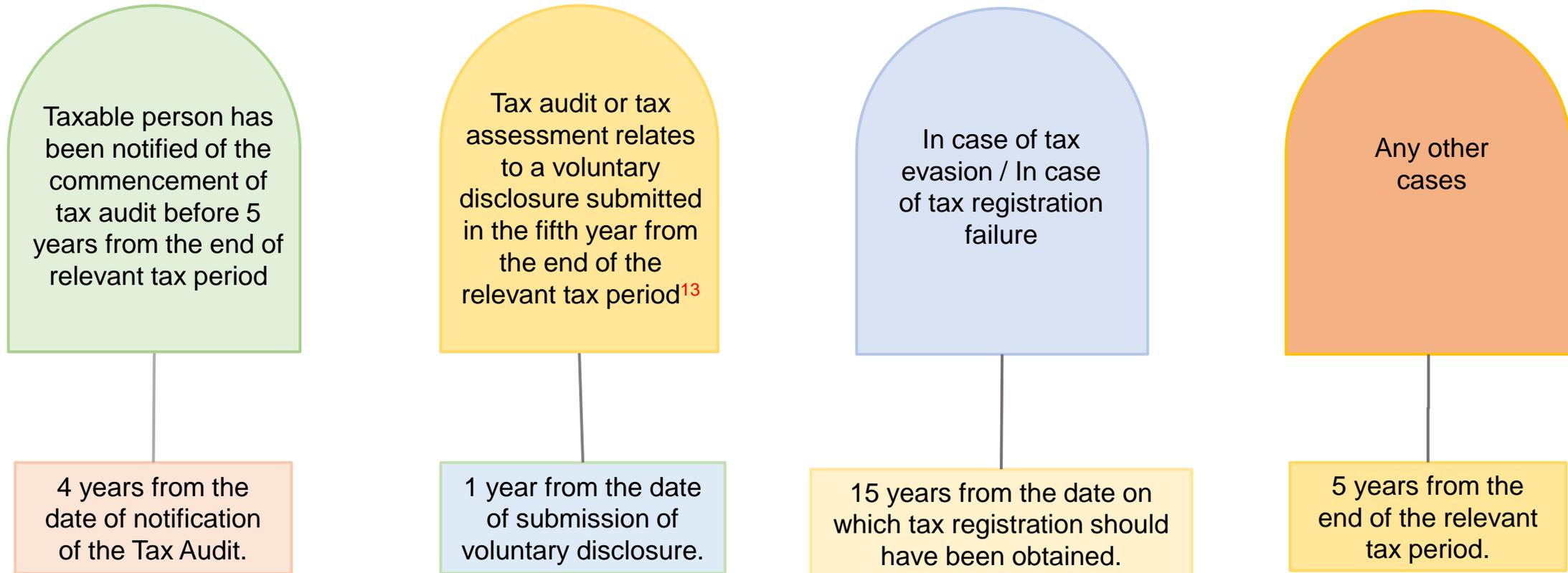
- The appointed bankruptcy trustee shall communicate with the tax authority.
- The Authority shall notify the bankruptcy trustee of amounts due or proposed tax audits with 20 business days of receipt of notification
- The bankruptcy trustee may object or appeal against the estimated dues notified by the tax authority (or) settle the due tax.



<sup>9</sup> Federal Decree-Law No. 28 of 2002 on Tax Procedures <sup>10</sup> Applicable legislations are also to be taken into account. <sup>11</sup> Additional procedures are to be notified in the Executive Legislation.

# Statute of Limitation:

The following period of limitations have been prescribed for conduct of tax audit or issuance of tax assessment<sup>12</sup> :



However, the tax authority's right to claim payable tax and administrative penalty of which the taxable person has been notified do not lapse with time.

<sup>12</sup>These timelines are subject to Civil Transactions Law and is amendable by way of issuance of Cabinet Decision. <sup>13</sup>The time limit for submission of voluntary disclosure is 5 years from the end of relevant tax period.

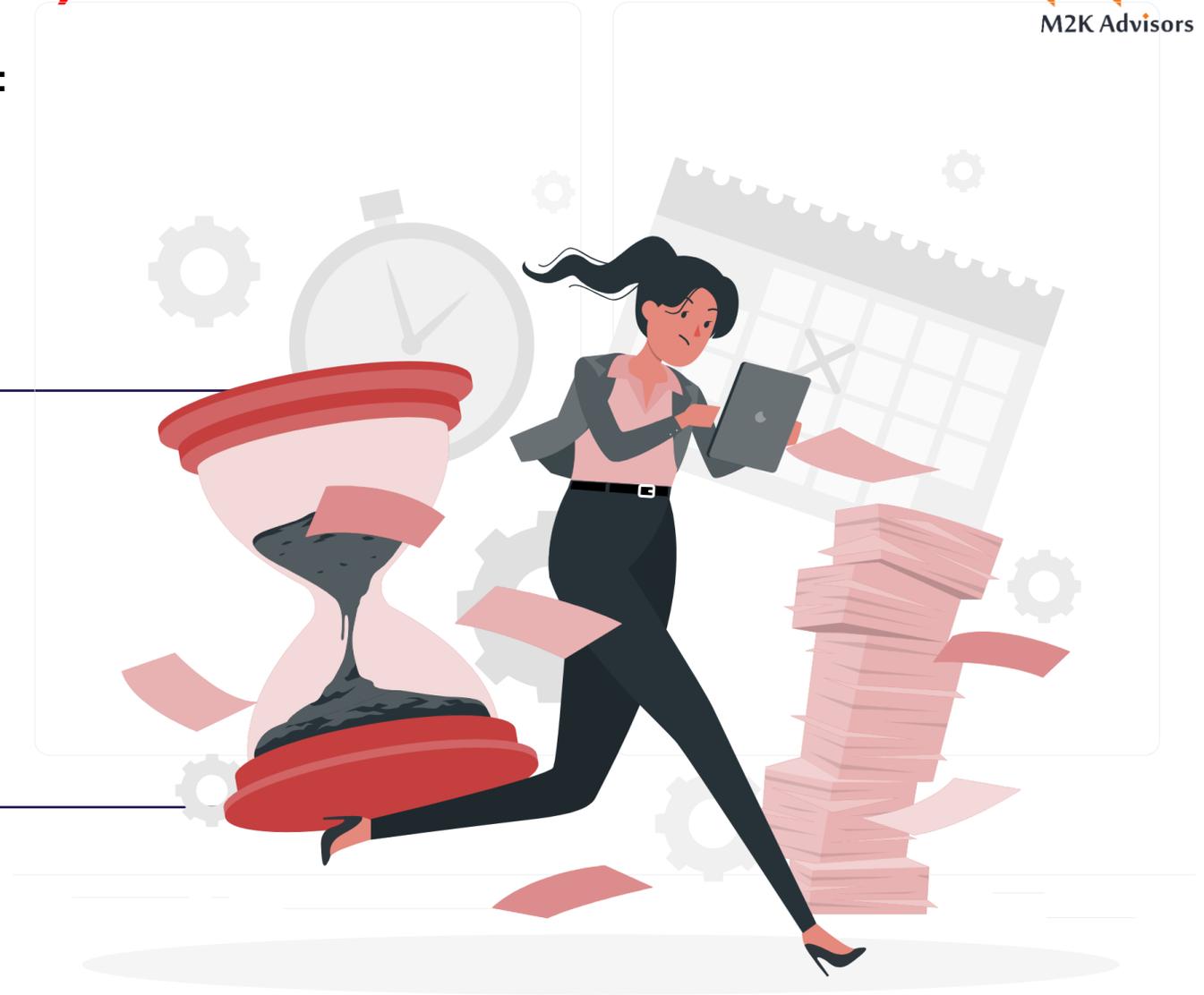
# Miscellaneous Provisions: (1/2)

## General Provisions for calculation of time periods:

In certain cases, the tax authority shall grant appropriate period for the same, not less than 5 business days and not exceeding 40 business days from the date of event arising to the obligation. The tax authority may extend the timelines.

### Burden of Proof:

- Proving the accuracy of the tax return is on the Taxable person
- Proving Tax evasion is on the Tax Authority.



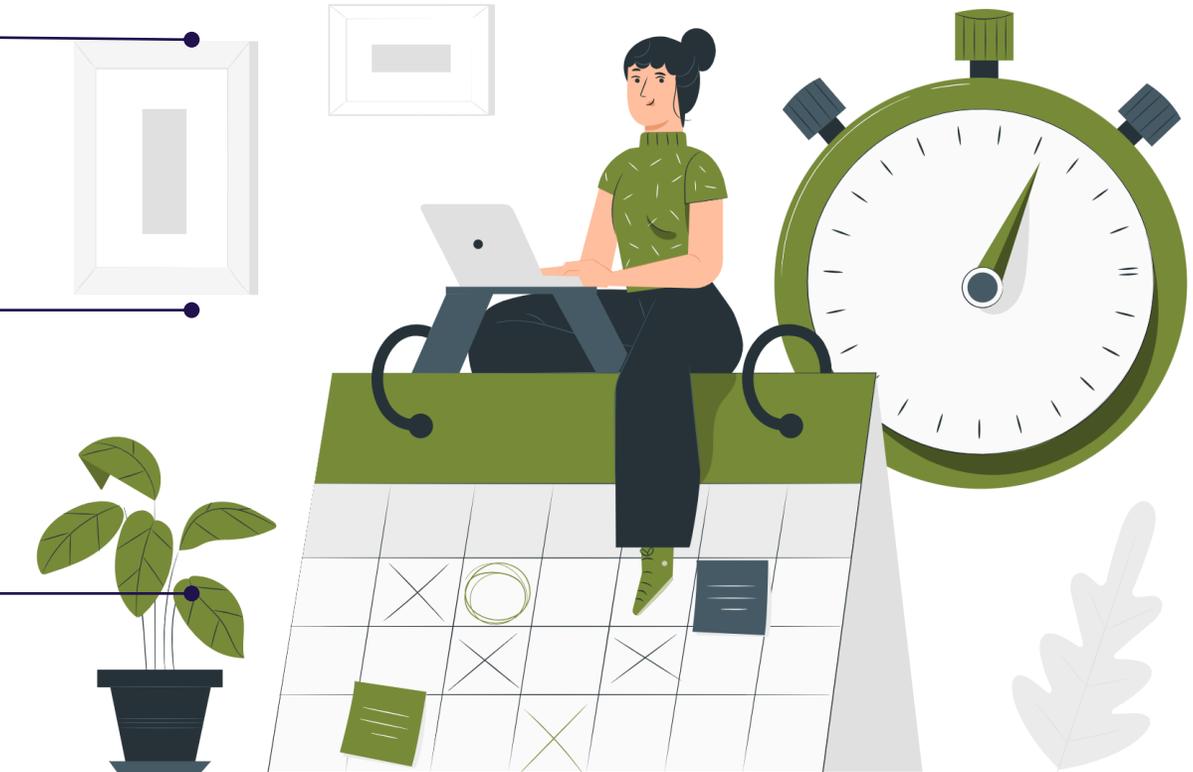
# Miscellaneous Provisions: (2/2)

## General Provisions for calculation of time periods

The day of notification or the day of occurrence of the event that gave rise to the beginning of the time period should not be included.

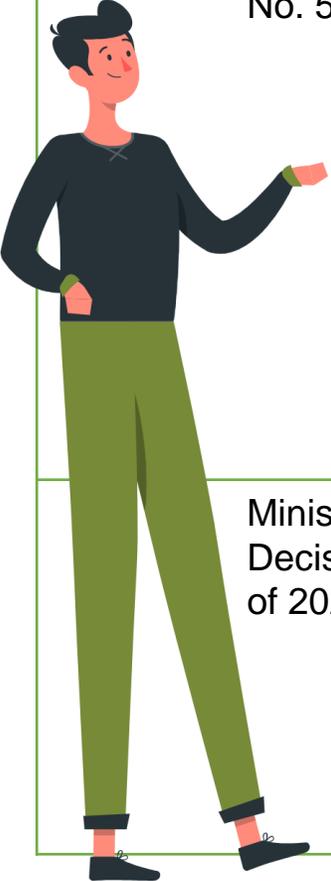
If the last day of the time period is not a Business Day, the time period should be extended to next Business Day.

Time periods and due dates to be calculated in accordance with the Gregorian Calendar.



# Recent Cabinet Decisions & Ministerial Decisions (1/5)

An overview of the recent Cabinet Decisions & Ministerial Decisions have been provided below.



Reference	Overview
Cabinet Decision No. 55 of 2023	<b>Qualifying Income for the Qualifying Free Zone Person:</b> <ul style="list-style-type: none"><li>Refer <a href="#">Slides #11 &amp; #12 of our Alert #1</a> for the provisions of Corporate Tax as applicable to Free Zone Persons.</li><li>The definition of 'qualifying income' has been provided in this Decision.</li><li>Income attributable to Permanent Establishment ('PE') in mainland and foreign countries are considered as taxable income.</li><li>Income attributable to the immovable property located in a Free Zone is also considered as taxable income.</li><li>Provisions in relation to maintenance of substance in a Freezone and outsourcing of activities are spelt out.</li></ul>
Ministerial Decision No. 139 of 2023	<b>Qualifying Activities and Excluded Activities:</b> <ul style="list-style-type: none"><li>The definition of 'qualifying income' provided in the above Cabinet Decision refers to terms 'qualifying activities' and 'excluded activities' and provides for a 'De Minimus' requirements to be prescribed by the Minister.</li><li>The above aspects have been defined.</li><li>Additional conditions to be satisfied by the Qualifying Free Zone Persons have been prescribed.</li></ul>

# Recent Cabinet Decisions & Ministerial Decisions (2/5)

Reference	Overview
Ministerial Decision No. 125 of 2023	<p><b>Tax Group:</b></p> <ul style="list-style-type: none"><li>Refer our <a href="#">Alert #9</a> for the provisions of the Corporate Tax Law in relation to Tax Group.</li><li>Further provisions in relation to Tax Group as applicable in various scenarios and the provisions that has an interplay with various other provisions of the Corporate Tax Law have been detailed.</li></ul>
Ministerial Decision No. 132 of 2023	<p><b>Transfers Within a Qualifying Group:</b></p> <ul style="list-style-type: none"><li>Refer <a href="#">Slides #8 to #11 of our Alert #7</a> for the provisions of the Corporate Tax Law in relation to the captioned subject.</li><li>Certain aspects that required clarifications, Procedural requirements in availing this relief, provisions as applicable to specific cases have been dealt with.</li></ul>
Ministerial Decision No. 133 of 2023	<p><b>Business Restructuring Relief:</b></p> <ul style="list-style-type: none"><li>Refer <a href="#">Slides #3 to #7 of our Alert #8</a> for the provisions of the Corporate Tax Law in relation to the captioned subject.</li><li>Certain aspects that required clarifications, Procedural requirements in availing this relief, provisions as applicable to specific cases have been dealt with</li></ul>



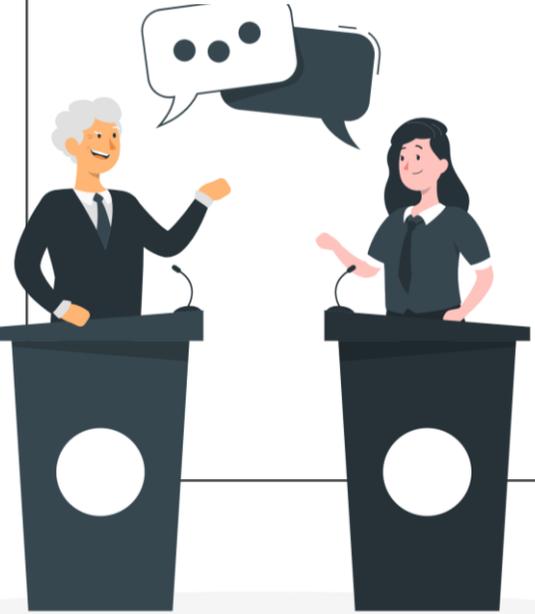
# Recent Cabinet Decisions & Ministerial Decisions (3/5)

Reference	Overview
Ministerial Decision No. 120 of 2023	<p><b>Adjustments Under the Transitional Rules:</b></p> <ul style="list-style-type: none"><li>• The transitional Rules in the UAE Corporate Tax Law<sup>14</sup> provides the manner in which closing balance sheet as at the last day of the financial year that ends immediately before the commencement of first tax period, which shall be considered as opening balance sheet.</li><li>• Finance Minister is empowered to prescribe any conditions or adjustments in this regard. In exercise of the same, an option is provided for exclusion of gains and losses in respect of qualifying assets.</li><li>• Computational Mechanism for the said adjustments, conditions to be satisfied and procedures for exercise of options have been detailed.</li></ul>



<sup>14</sup>Federal Decree-Law No. 47 of 2022

# Recent Cabinet Decisions & Ministerial Decisions (4/5)

Reference	Overview
<p>Ministerial Decision No. 126 of 2023</p> 	<p><b>General Interest Deduction Limitation Rule:</b></p> <ul style="list-style-type: none"><li>• Refer <a href="#">Slide #9 of our Alert #5</a> for the provisions of the Corporate Tax Law in relation to General Interest Deduction Limitation Rule (i.e. Thin Capitalization).</li><li>• The subject Ministerial Decision has provided clarity on treatment of certain items:<ul style="list-style-type: none"><li>○ Interest component on Financial Assets &amp; Liabilities</li><li>○ Amounts incurred in connection with raising finance.</li><li>○ Islamic Financial Instruments</li><li>○ Finance and Non-Finance Lease</li><li>○ Foreign exchange movements</li><li>○ Capitalized Interest</li></ul></li><li>• Further, a threshold limit of net interest expenditure of AED 12 Million (for a tax period with 12 months) has been provided for application of General Interest Deduction Limitation Rule.</li><li>• Certain other aspects dealing with the computation of various parameters when applying the provisions have been clarified.</li></ul>

# Recent Cabinet Decisions & Ministerial Decisions (5/5)

Reference	Overview
Ministerial Decision No. 127 of 2023	<p><b>Unincorporated Partnership, Foreign Partnership and Family Foundation:</b></p> <ul style="list-style-type: none"><li>• Refer <a href="#">Slides #8 to #10 of our Alert #1</a> for the provisions of the Corporate Tax Law in relation to the captioned subject.</li><li>• Additional provisions, conditions to be satisfied etc. have been prescribed.</li></ul>
Ministerial Decision No. 134 of 2023	<p><b>General Rules for Determining Taxable Income:</b></p> <ul style="list-style-type: none"><li>• Refer our <a href="#">Alert #5</a> for the provisions of the Corporate Tax Law in relation to the captioned subject.</li><li>• Additional adjustments to be made to profits as per financial statements in computation of taxable income, as applicable to specific cases have been prescribed.</li></ul>



# Stay tuned for more updates on UAE!

Please find below the list of completed & upcoming alerts from the series. In case you have missed the previous alerts, click on the hyperlink for the completed alerts to refer the same.

- 1  
Levy Of Corporate Tax
- 2  
Taxation of Non-residents - State Sourced Income
- 3  
Permanent Establishment
- 4  
Exempt Persons & Exempt Income
- 5  
Deductions & Determination of Taxable Income
- 6  
Corporate Tax calculations, payments, tax credits & refund
- 7 & 8  
Reliefs – Part I & Reliefs – Part II
- 9  
Tax Group
- 10  
Transfer Pricing
- 11  
General anti-abuse rules & Corporate Tax Compliances
- 12 & 13  
Tax Procedures Part I & Part II
- 14  
India-UAE DTAA Key Provisions & Way Forward



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