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Specifics of Tax Control in Albania

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Abstract: ***The mission of the tax administration in Albania is to encourage and achieve the highest level of implementation and voluntary compliance of tax obligations, and to ensure the highest degree of public trust to the integrity and efficiency of the tax administration. The implementation of tax legislation cannot be achieved without awareness and education of taxpayers and the public for the voluntary fulfillment of tax obligations, and such a thing cannot be achieved without an efficient tax audit. Balancing the tax administration resources through education and service to the taxpayer on the one hand, an efficient control and coercive measures on the other hand, is a key factor for increasing the level of voluntary fulfillment of tax obligations and effective enforcement of tax legislation. This study is based on tax legislation of the RA and tends to show the specifics of tax control in Albania. At the end of this paper, I will give my conclusions of the issue.***

Keywords: taxpayer, law, audit, tax, auditor**.**

1. Introduction

It is the duty of the tax administration to ensure the correct enforcement of the tax laws established by legislative bodies, to determine and provide the understanding and application of provisions of these laws, in the spirit of the Law "On Tax Procedures in the RA", and specific laws of taxes, treating equally and impartially taxpayers.

Employees of Tax Audit Sector should be guided by the principle of implementation in a fair and effective manner of the tax legislation. Every taxpayer has the right of fair and professional treatment for issues related to tax liabilities. Qualities that should have the employee tax audit are: honesty, ethical behavior, fairness in the application of law, competence and professional skills during the execution of tasks etc..

Employees of Tax Audit Sector should avoid any conflict of interest during the execution of tasks. They do not have to manage, influence or guide the taxpayer in its activity and must declare in advance cases, when they are related directly or indirectly to the taxpayer. Also they cannot control or estimate their taxes, or to persons connected with them.

The tax auditor should respect the rights of taxpayers they control. Every taxpayer has the right of reasonable controls; the right of confidentiality for its financial records; the right of information; the right to be heard and the right to appeal, etc., and these rights are defined in Articles 30 and 38 of Law No. 9920 dated 19.05.2008 "On Tax Procedures in RA"; and the instruction of the Minister of Finance no. 24, dated 02.09.2008.

2. The main objective of the tax audit in Albania

The main objective of tax administration is to increase the level of voluntary tax compliance through education, awareness and efficient service to taxpayers.

The main reason of the tax audit is not the discovery and realization of income, but the discovery of flaws, fixes them up for the future, education of taxpayers, and especially prevention of tax evasion.

The primary objective of tax control is to consolidate the current level of income derived from tax authorities, making identification of errors in the assessment and collection of tax revenues resulting from the declaration of less value, stimulate voluntary compliance of tax obligations, to prevent the tax avoidance and ensure discouragement of tax evasion. Before conducting the audit, inspectors should look carefully the last tax statement of the taxpayer, by searching any unclear issues, or any controversial issue. They should take into consideration the results of previous inspections, and if there are weak points at the previous control, they should be reviewed. During the planning of control and the exercise of control, the auditor should take into account the following objectives:

- Balance sheet and transactions are included in the financial statement;
- Recorded transactions and balance sheet must be mathematically correct;
- Assets and liabilities recorded in fact exist;
- Transactions are not fictitious;
- Transactions are recorded at the right time;
- Transactions are calculated in accordance with the law;
- Recorded assets belong to taxpayers;
- Recorded liabilities are obligations of taxpayers;
- Accounts are classified correctly etc.

Tax audits in Albania are:
1) Full control - These are comprehensive examinations taken to control all aspects of the business of taxpayer for all time periods since the last full inspection.
2) Tax visit - These are short checks performed during a short period of time to verify the accuracy of statements and payments, as a rule only for a tax period and only for a kind of tax.
3) Check in place - continuous verification of applicability of tax legislation by taxpayers.

3. Management of Tax Audit

3.1 Sending the notification for tax control and relevant program.

According to Article 81 of the Law "On Tax Procedures in RA," tax administration sends the taxpayer a notice of control which determines; the taxpayer - subject to tax audit, accompanied with the control program, which predetermines; types of tax - subject to control; tax period or periods for which tax audit performed; date and time of the beginning of tax audit etc..

3.2 Strategic considerations

The experience has indicated that control of large entities, have resulted in the concealment of taxes (tax evasion), and as a result, big business in general represents the largest area of revenue risk and therefore should be treated with great attention. Control must be systematic and need an approach like "top-down", starting with the identification of strategic issues, and based on these issues, we need to determine the mode of exercising control. Specifically should be taken the following steps:

- Planning, control and recording of data. Controller will plan, control and record his work accurately.
- Systems of keeping accounts (balance sheets). The controller must navigate the system keeping the data, and the method of processing transactions and assess subject, accurateness, which is the basis for the preparation of tax declarations.
- Evidence of control. The controller must provide relevant evidence to enable the drawing of conclusions for the accuracy of financial data.
- Internal controls. If the controller wants to rate the reliability of internal controls, he should make an assessment concluding authenticity and accuracy of performing of operations.
- Review of financial data. The auditor should review the financial data to the extent that give him a reasonable basis to judge in terms of accuracy of the tax declarations.

3.3 Method of planning

Tax procedures should be planned, conducted and evaluated so that the controller can detect evasion of taxes on the financial data and other information, which affect the taxpayer's tax position.

To achieve this way of treatment- "top-down", it is necessary to take these steps:

Step 1: To provide recognition to the taxpayer and to identify legislation that will impact directly on its tax obligations.
Step 2: Identify areas with high risk and by the assessment of the major risks identified and define the directions of control.
Step 3: Collect the necessary information, starting with the controls of governing bodies, controls of accounting systems, and finally the internal control accounts.
Step 4: From the assessment of identified risks, should be defined areas of control, estimating with the above mentioned factors.
Step 5: To the big taxpayer that have internal control, should evaluate internal accounting controls, and should have developed a testing program as needed.

3.4 The preparatory work and analysis performed before a full tax audit

Before the tax inspector will decide what to analyze during the tax audit, he should make the audit plan using the taxpayer's file. Planning should include some steps that are explained in detail as follows:

Step 1: Review of taxpayer, gathering information in order to better recognize him.
Step2: Preliminary analytical review, evaluating and examining the activities of taxpayer.
Step 3: Assessment of risk for not telling the true position of taxpayers
Step 4: Evaluation of the effectiveness of internal controls to enable the planned strategy for control.
Step 5: Defining control strategy taking into account the results of the information collected in connection with the taxpayer, for judgments and decisions about risk and control effectiveness. The strategy should also take into account which business areas are controlled in the previous control in order to avoid the repetition.

4. Performing the Tax Audit

4.1 The beginning of Tax Audit

The control must be performed in the environment where the taxpayer conducts his business, and the auditor should also visit the other units of business. The controller should ask for the business data on which exercises control, or the previous period. When there is resistance from the taxpayer or his consultants, this resistance usually combated by making to know that the delay in providing information, is considered as reluctance for collaboration, and that just increases the duration of control, and therefore obstacles to economic activity of the taxpayer.

4.2 The initial interview and verification of internal controls

Initially, the controller interviews a representative of the company. The initial interview is very important and it is necessary that control inspector to be well prepared. The mandatory checks should be included in this interview, for making it possible, that the data has the taxpayer be taken and dumped in the file. During the interview, the auditor should determine the extent and effectiveness of internal controls exercised to taxpayer. To evaluate the effectiveness of internal control system, the controller determines the key elements to the control environment, accounting systems and internal controls to taxpayer.

4.3 Verifications

- Verify whether the data recorded are accurate.
- Make the verification of data that has the taxpayer, or a change from records verified in the previous audits.
- Verify the ownership and management structure of the taxpayer.
- Verify the cash management of the taxpayer.
- Make verification of the taxpayer's business activities.
- Verify if the taxpayer pays other taxes.
- Verify the position of crediting and VAT refunds of the taxpayer.
- Verify the taxpayer's knowledge for the tax that is controlled.
- Determine who has initialed a tax declaration.
- Inspect all environments and activities of taxpayer, and see the level of activity.
- Make verification and control of financial documentation such as; purchase invoices, sale invoices, mandates of payments, mandates of revenue collection, accounting diaries, records of accounts, financial statements, etc., since the last control.

4.4 Evidence of tax audit - audit report

The control should be reflected in the format of a standard report and placed in file of taxpayers. At the end of each audit, the auditor should make a full report and written clearly. The audit report is the basis for any evaluation, for the subsequent controls and to assess the work done of controller from managers. This report should be complete and:

- Ensure that verifications be carried out independently,
- Indicates that the control is done accurately, and rely on tax assessment ,
- Provide continuity of the maintenance of data for future audits.

5. The preparation of audit report

According to articles 83 and 84 of the Law “On Tax Procedures in RA", steps to be followed for the preparations of the audit report are:

- Tax controller is responsible for the preparation of the audit report, within seven calendar days after the date of completion of the tax audit.
- The audit report gives the results of the control, the amount of the proposed assessment and legal references that justify the proposal, and signed by the inspector / inspectors of tax control.
- A copy of the audit report is filed and a copy shall be sent, by mail to the taxpayer.
- The taxpayer is entitled to contest the results of the tax audit within 15 (fifteen) calendar days after the date when the report is estimated that is received by the taxpayer (within ten days).
- The objection of taxpayer is submitted in writing, in which are given the reasons for such rejection.
- The control teams consider the objection, within 5 working days of receipt of the objection, and the reasoning given by the control team included in the final audit report.
- The final report of tax audit is completed and signed by all members of the control group and approved by the ordainer of control, within 14 calendar days from the date of receipt of the objection, or estimated to be received from the tax audit group.
- The final report of the tax audit describes; period for which the audit was conducted, a description of the documents reviewed, people interviewed, reasoning and objections of taxpayer, legal references used for tax assessment and result of the control.
- A copy of the final audit report and the amount of the assessment is sent to the taxpayer by mail and a copy is archived at the Regional Tax Directorate.
- If the final audit report proposes a new assessment, which enters into force 30 calendar days from the date the audit report is received, or estimated to be received from the taxpayer.
- A taxpayer, who objects to the proposed assessment, may appeal in accordance with the provisions of chapter XIII of the law “On Tax Procedures”.

6. Conclusions

Tax legislation in Albania provides for the possibility of appeal of results of the audit report in three phases:

1) At the respective Regional Directorate of Taxes, within 15 days from the date of receipt of the audit report project.
2) At the Directorate of Tax Appeals, within 30 days after receiving the notice of tax assessment.
    - The taxpayer submits a complaint to the Directorate of Tax Appeals within 30 calendar days from the date, that the assessment or the decision of the tax administration is received or estimated to be received by the taxpayer.
    - A taxpayer who wants to appeal under paragraph 1 of article 106 of law “On the tax procedures”, together with the appeal must pay the full amount of the tax liability or establish a bank guarantee for the full amount of the tax liability specified in the notice of the assessment of the tax administration.
    - The amount payable or the bank guarantee under paragraph 1 of this article shall preclude fines.
3) At the Administrative Court within 30 days of receiving the decision of the Appeals Directorate.
    - In connection with the first phase of the appeal, the paradox is that the inspector who has controlled the taxpayer, considers the appeal. In such cases, legislation should be provided for the establishment of a commission to examine the taxpayer's appeal. In this commission should not be included the controller.
    - Even in the second phase of the appeal have problems. For example: Referring to articles 71 and 72 of the law "On the tax procedures", the tax administration has the right of the tax re-assessment in these cases:
        a) tax statement contains inaccurate data or falsified;
        b) taxpayer does not maintain accurate records of transactions;
        c) taxpayer does not cooperate with the authorized tax control;

d) taxpayer does not make available the information required and other documents necessary for calculating their tax liability.

In terms of points "c" and "d" the instruction cites; when the taxpayer does not allow access to the control, the tax assessment is done directly from the office, using rules defined in the article 72 of the law, without needing the presence of the tax inspector in the taxpayer's environment. The notice of the tax assessment prepared by the tax office sent to the taxpayer by signing the Director of the Regional Directorate of Taxes. The tax assessment of the tax administration, made from the office, will cancle, when the taxpayer customize his situation, and create conditions allowing for the exercise of the tax control. But, referring to the article 70 "The right to issue a notice of the tax assessment" of the law "On tax procedures in the RA", the notice of the assessment for the tax obligations signed by the Regional Director becomes final and considered as normative act. But, the Directorate of Tax Appeals or the Administrative Court have the right to cancel this normative act referred to articles 108 to 109 of this law. As a result, in these circumstances, the taxpayer, for which is carried out the alternative assessment, even has enabled the necessary infrastructure for the control, in order to be carried out a realistic and reasonable control, must perform the grievance procedures in order to resume the control procedures. The taxpayer must appeal and win the right to be re-controlled, according to article 106 and 107 of this law and should follow the above steps. So, the complaint will be considered only if the taxpayer has paid the tax liability, which is subject to appeal, or filed document that confirms the bank guarantee. If the tax reassessment is a considerable amount and the taxpayer can not pay, then, the taxpayer does not benefit of this legal reference, thus, the re-conducting of the tax control. So, this is a case where the law has difficulties in its implementation in practice. The solution in this case would be, that the law provided, the Regional Director, that issues the notice of the assessment for taxes, must have the right to repeal in the special cases. On the contrary, in such cases the decision of the Department of the Tax Appeals to repeal the assessment notice dealing with the request of the Director of the GDT.

While in connection with the third phase of the appeal, the decision of the Administrative Court is not professional, because, in its decision are not taken into account of consultancy of tax experts and accounting experts.

References

[1] Law no. 9920 Dated. 19.05.2008 "On Tax Procedures in the RA"
[2] Instruction of the Ministry of Finance no.24 dated 02.09.2008 "On Tax Procedures in the RA."
[3] Law no. 7928 dated 27.4.1995 "On Value Added Tax in the RA."
[4] Instruction of the Ministry of Finance no.17 dated 13.05.2008 "On Value Added Tax in the RA".
[5] Law no. 8438 "On Income Tax" dated 28.12.1998.
[6] Instruction of the Ministry of Finance no. 5 dated 30.01.2006 On Income Tax ".
[7] Law no. 9228 dated 29.04.2004 "On Accounting and Financial Statements"
[8] "Tax Glossary", International Bureau of Fiscal Documentation.

Author Profile

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