Global Tax Update

Vietnam

Deloitte Tohmatsu Tax Co.

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Update on the trends in application of risk management in tax administration

Risk management in Tax administration started to be applied by tax authorities from 2011, then was legally enforced in the Law on amendments and supplements of the Law on Tax management (2012) and its guiding Decree 83/2013/ND-CP. On this basis, the Ministry of Finance recently issued the Circular No. 204/2015/TT-BTC dated 21 December 2015 (effective from 04 February 2016) specifying the application of risk management in tax administration with notable points as follows:

(1) Risk management will be applicable to all tax administration activities

The tax authorities will apply risk management methodologies to all major activities of tax administration, including:

- Tax registration;
- Tax declaration, payment;
- Tax debts and enforcement of tax administration decisions;
- Tax refund;
- Tax audits, inspection;
- Management and use of tax papers;
- Other activities during implementation of tax administration tasks.

Accordingly, the tax payers are subject to be **assessed, ranked on risk levels** based on **a set of criteria and indicators** developed by the tax authorities using **various information sources** to form the basis for the application of tax administration methods, including risk assessment for selection of inspection, tax audits, classification of tax refund dossier, classification of cases of forming, printing, publishing, managing, using tax papers,...

(2) Criteria, indicators and information for risk assessment

The set of criteria and indicators serving risk management are formulated for each professional tax administration technique for various purposes, including:

- 2 sets of criteria, indicators to (i) assess the level of tax compliance and (ii) evaluate the rating on risk levels of tax payers;
- 6 sets of criteria, indicators to (i) select cases for audit of tax registration; (ii) choose tax declaration dossiers to audit at the tax payers' office; (iii) classify tax refund dossiers and select tax payers to supplement the plans for audit and inspection after refund; (iv) choose cases of inspection, audit at tax payers' office; (v) manage tax debt collection and

application of enforcement; (vi) identify risky cases to supplement the plans for audits and inspection of invoices and other tax papers.

The above criteria, indicators are formulated on the basis of **information and data that the tax authorities have collected**, processed from both internal and external sources, including some key sources as below:

- Information from dossiers of tax registration, declaration, payment of tax payers;
- Information exchanged with other competent authorities; or discussed with tax authorities in other countries and territories, as well as other overseas organisations, and individuals;
- Information about law violation status of the tax payers (which are detected and handled by the tax authorities and other competent authorities).

Tax authorities will use the sets of criteria, ratings of risk levels and system of professional technical information to classify, build and manage the **risky tax-payer list based on each tax administration area**.

(3) Assessing, rating taxpayer's risk automatically by professional information system

Taxpayers are assessed and rated according to **6 levels of risk** (very low risk; low risk; average risk; high risk; very high risk, taxpayer groups that have operation time less than 12 months). Accordingly, the tax authorities shall use the results of assessing and risk rating as the basis to implement their audit, inspection and supervision measures for high-risk taxpayers.

In addition, tax authorities shall also assess, **classify the compliance levels of taxpayers into 03 categories**, being high-compliance (category 1), moderate-compliance (category 2), and low-compliance (category 3).

The level of compliance of taxpayer is an important criterion for the tax authorities' consideration during tax administration process. Accordingly, **taxpayers having high compliance level will be prioritized** in tax refunding, invoice use, compared with low-compliant taxpayers.

Noticeably, taxpayers will be classified into the **low-compliance level** if it falls into one of the following typical cases:

- Having accumulated losses exceeding 50% (fifty percent) of the equity of the enterprise by the time of assessment;
- The periods of negative value added tax amounts declared are constantly above the average of the companies in the same field, sector;
- During 02 consecutive years prior to the date of assessment, the enterprises have been sanctioned for administrative violations by the authorities because of tax evasion, tax fraud; or have been sanctioned in the accounting field.

The **classification** of the level of compliance and risk rating of taxpayers was conducted **automatically, consistently in the order of the following 3 steps:**

- Collecting and processing taxpayers' information by electronically centered method in the "Taxpayers database system" of the General Department of Taxation;
- Forming and promulgating a set of criteria and risk management indicators meeting the tax management requirements in each period (3 years) and reviewing quarterly to adjust and supplement them in order to be updated;
- Analizing information, identifying, assessing the level of compliance and rating taxpayer's risks.

(4) Risk management in inspection and audit

Number of cases of inspection and audit at taxpayers' office that are selected through analyzing, assessing the level of risk must **not be less than 90% of cases inspected, audited** under the annual plan.

Since 2015, the General Department of Taxation has issued a set of criteria including 20 static criteria and 24 variable criteria. This set of criteria is applied uniformly in all tax authorities in order to select cases for tax inspection and audit. Through this set of criteria, the tax authorities may assess adequately the financial position, tax risks and the level of compliance with tax laws and policies of the taxpayers.

(5) Risk management for tax refund

Tax authorities use their own database system to classify tax refund dossiers into two cases: pre-refund tax audit and post – refund tax audit.

Concurrently, for the tax refund dossiers in the case of post – refund tax audit, the authorities will select the case of post – refund tax audit in the order of priority depending on the risk level of the taxpayer. In which:

- ➢ For enterprises falling into cases specified in Point a, Clause 4, Article 41, Decree 83/2013/ND-CP (Enterprises declared two consecutive years of loss prior to the year having tax refund decisions; Enterprises receive tax refund from the real estate business, commercial business; ...): Subject to be post – refund audited, inpsected **within a year** since the day of receiving tax refund decision.
- ➢ For enterprises falling into cases specified in Point a, Clause 4, Article 41, Decree 83/2013/ND-CP (Other cases): The tax authorities will conduct post – refund tax audit, inspection for **all high-risk enterprises** within **60 days, 50% of risky enterprises** will be audited and inspected within **90 days** and **50%** of the rest of risky enterprises will be audited and inspected within **180 days** since the day receiving tax refund decision.

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