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Tax disputes: what's new in the pre-trial and court tax audit dispute resolution



In this issue, we discuss some of the most interesting and important amendments to Kazakhstan tax and civil procedural law with respect to the *pre-trial* and *court* tax audit dispute resolution.

Tax disputes: what's new in the pre-trial and court tax audit dispute resolution

Dear friends,

In 2017 there are a number of important amendments and additions to be made to procedures for the pre-trial (to be introduced on 1 July 2017¹) and court tax audit dispute resolution (in force from 11 March²).

Below you can find a brief summary of these **amendments and additions**.

New in the pre-trial tax audit dispute resolution effective from 1 July 2017

Procedure: Preliminary tax audit act

- Before issuing tax audit acts, the tax authorities will issue taxpayers with a "preliminary tax audit act" drafted by the relevant inspector and referring to preliminary tax audit results.
- Taxpayers will be entitled to object to the preliminary tax audit act in writing.
- The categories of taxpayers, procedure and deadlines for filing written objections to preliminary tax audit acts, and the period for reviewing them are yet to be approved by the competent state authority. It is currently thought that preliminary tax audit acts will initially cover major taxpayers.

Institutional amendments

- According to Tax Code amendments, tax audit results should now be disputed with the competent state authority, i.e. the SRC of the Ministry of Finance of Kazakhstan (the SRC).
- Previously, tax audit results were disputed with the next higher tax body and then the competent authority. At the same time, it is important to note that by introducing this amendment, the legislature has only codified the established practice of dispute resolution procedure.
- Under the amendments, the SRC will create an Appeal Commission to consider appeals of the notifications of audit results. The composition and regulations of the

Appeal Commission shall be approved by the competent authority.

SRC appeal consideration: documents and procedure for suspending and (or) extending appeal consideration time

- Taxpayers should attach copies of acts and disputed notifications to their appeals.
- The provisions regulating the period by which an appeal can be suspended and (or) extended have also been amended.

Thus, the period by which an appeal can be suspended shall be as follows:

By 15 business days

From the date the SRC receives an act on a targeted and repeated targeted audit. Currently, the appeal consideration period can be suspended until the relevant audits are completed

By 15 business days

From the date of receipt of a response to each request sent to the authorities, relevant overseas bodies or other organisations regarding issues under their competence

Currently, the appeal consideration period can be suspended in this case until a response is received

Within 3 business days

From the day an audit is assigned and (or) a request is sent, the SRC should notify the taxpayer in writing of the suspension of its appeal consideration, stating the ground for the suspension

By 15 business days

An appeal consideration period can be extended if a taxpayer files an addition to its appeal. With the new additions, the appeal period is extended by the stated period **each time new addition is filed**

Up to 90 business days

The SRC is entitled to extend the appeal consideration period if more time is required to study a disputed issue

¹ Law № 26-VI dated 30 November 2016 On the Introduction of Amendments and Additions to Certain Legislative Acts regarding Taxation and Customs Administration

² Law № 49-VI dated 27 February 2017 On the Introduction of Amendments and Additions to Certain Legislative Acts regarding Improvements to Civil and Banking Law and to doing Business

Within 3 business days

From the date of the extension of the appeal consideration period, the SRC will inform the taxpayer of an extension to a consideration period

- When considering an appeal, the SRC will be entitled to, inter alia,
 - request the taxpayer and (or) tax authorities that conducted the tax audit and considered the taxpayer's objections to an act of tax audit to provide additional written information or explanations on issues discussed in the appeal.
- A decision on appeal consideration should contain support for a reference to international treaties ratified by Kazakhstan and (or) Kazakhstan law followed by the competent authority to issue its ruling.

Appeal consideration by SRC: appointing and conducting a targeted audit during a notification appeal period

- The period within which the tax authorities should start a targeted audit appointed within the process of appeal consideration will be extended.

Thus, the targeted audit shall start not later than **10 business days** from the date the tax authorities receive a document regarding the audit, which is different from the current 5 business days.

- With that, if details are unclear or incomplete and new issues arise in relation to circumstances and documents previously reviewed during a targeted audit, the SRC will be entitled to initiate an audit again.

New in court consideration of tax audit disputes effective from 11 March 2017

The procedure for preparation of a case for consideration

Within 3 business days

From the claim form acceptance date, a judge should send the defendant and third parties copies of a claim and any documents supporting the plaintiff's claim as a part of the procedure for preparing for court

Consequently, the plaintiff no longer needs to attach documents to a claim confirming that it has sent copies of the claim and supporting documents to the defendant, its representatives or third parties. However, the plaintiff should attach copies of claim and supporting documents for each defendant and third party when submitting the claim to court.

Not later than 10 business days of the receipt of the claim form


A defendant should file a statement of defence and documents refuting the arguments of a claim, as well as copies of the statement of defence and supporting documents


Within 3 business days.

A judge should send the plaintiff and other parties participating in the case copies of the statement of defence and supporting documents

How Deloitte can help

Deloitte Legal in Kazakhstan will be pleased to provide a more detailed advice on the issues discussed in this alert, and professional services on a wide range of legal issues, including, but not limited to:

 Preparation for and support during state tax, customs and ecological audits;

 Representing client interests in pre-trial and court disputes in relation to appeal of the results of audits carried out by the competent state authorities and in administrative cases.

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