



Appealing in-house control results: practical features and judicial practice

Despite legislative changes, appealing in-house control results in and out of court remains an ambiguous process and causes significant problems for businesses, such as the suspension of expense operations, completely blocking operations for weeks and months. Below, we share some practical features of appealing the results of in-house control, which will help you build a strategy of behaviour from the very start of the process.

Regulation of in-house control

With the introduction of a new Tax Code from 1 January 2018, an entity is recognised as having executed notification to clear violations revealed by in-house control (“Notification”) by providing one of the following documents:

- Tax reporting for the tax period to which the violations relate (if the entity agrees with the Notification)
- An explanation of the violation (if the entity disagrees with the notification).

At the same time, if a Notification is recognized as not having been discharged, the state revenue authorities will issue the corresponding written decision (“Decision”). In practice, they consider substantive explanations, and do not limit themselves to verifying the requirements of point 2 of article 96 of the Tax Code with respect to form and timing, which does not correspond to the meaning and aims of in-house control.

When an appeal is filed with a higher state revenue authority or a court, the Notification period is suspended from the moment it is accepted by the higher state revenue authority or court.

Changes from 1 January 2020

Firstly, a clarification was made to paragraph 4 of article 96 of the Tax Code, so that Decision are issued if an explanation does not meet form and timing requirements. Thus, the amendment removes the consideration of clarification by the state revenue authorities on merit.

Secondly, the decision now need to be sent to taxpayers (tax agents) within five working days of the deadline for discharging a Notification.

Thirdly, the decision appeal period has been reduced from three months to five business days from the date a taxpayer receives the decision. If the decision is appealed with a higher state revenue body or court, bank account expense transactions are not suspended from the moment the corresponding appeal is accepted by the higher authority or court. For the purposes of the above, a copy of the appeal with a note confirming the higher authority’s acceptance or an application together with a court ruling on its acceptance for processing should be sent to the tax authority that issued the Decision.

Practice

All court cases arising during 2020 Q1 can be divided into 1) appeals against a Notification to discharge violations revealed by the in-house control and 2) appeals against Decision declaring a Notification as not discharged.

Group 1

Standard case: the plaintiff, after the tax authority’s refusal to accept its explanation sent in response to a Notification, requests that the Notification be recognised as invalid.

Court decision: refuse to satisfy the Plaintiff’s claims, because by virtue of paragraph 19 of the Normative Decree of the Supreme Court of the Republic of Kazakhstan “On judicial practice of applying tax legislation” No. 4 dated June 29, 2017, when considering civil cases on challenging notifications based on the results of in-house control, it is necessary to resolve the issue of legality specified in Notification of the grounds without checking their substantiation. There are no grounds for declaring in-house control and Notifications as invalid.

Comments: since tax legislation does not provide clear criteria and conditions for conducting in-house control, it is quite difficult to find grounds for recognising them as invalid. Thus, appealing a Notification to discharge violations revealed by in-house control is a losing strategy, except in cases of obvious violations, such as a violation of the statute of limitations.

Group 2

Standard case: the plaintiff, after the tax authority’s refusal to accept its explanation sent in response to a Notification and recognise the Notification as not discharged, requests that the decision to recognise the Notification as not discharged be declared unlawful.

Court decision: depending on actual case circumstances, the court will either (1) refuse to uphold the Plaintiff’s demands, as the Plaintiff did not provide its explanations in time, or the explanations do not meet the requirements of paragraph 4 of article 96 of the Tax Code or (2) uphold the Plaintiff’s requirements, if the above violations were not observed.

Comments: despite the tax authorities’ position that taxpayer explanations should be considered on their merits, paragraph 4 of article 96 of the Tax Code stipulates that decision is issued if explanations do not meet form and timing requirements, which rules out the need for and the possibility of considering explanations on their merits.

The above examples of typical disputes are not exhaustive. A number of court decisions still contain incorrect interpretations of article 96 of the Tax Code. However, we hope that with an increase in the number of disputes, we will begin to see some kind of consistency in court practices.

We will be pleased to answer any questions you may have. Please refer to the contacts below.

Contact us:

Olessya Kirilovskaya

Director

Tel: +7 727 258 13 40 (ext. 8717)
okirilovskaya@deloitte.kz

Rinata Zhulayeva

Senior Lawyer

Tel.: +7 717 258 04 80 (ext. 8528)
rzhulayeva@deloitte.kz

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