Changes in calculating duration of tax audit (2/19/19)

Recent amendments to the Taxes and Duties Act have changed the tax audit time limit rules. A tax audit that includes a transfer pricing review no longer has a time limit. There are also new rules for obtaining information during any period that is excluded from a tax audit, and a rule stating that the audit time frame excludes any period during which the taxpayer is preparing an opinion on the audit findings.

The amendments

Companies undergoing a tax audit could so far face a situation where the SRS made the audit findings known to the taxpayer shortly before the audit was completed, so the taxpayer did not have enough time to refute SRS arguments and make adequate preparations for the closing interview.

Since the SRS is bound by the statutory time limit for a tax audit, there have been cases where the taxpayer was unable to prepare arguments during the tax audit, so important additional arguments were not presented until the taxpayer challenged the audit decision.

To prevent a situation where essential facts are not examined until the decision is challenged, the amendments provide that the tax audit time frame excludes the period running from the date the taxpayer is notified of any breaches detected during the audit, and of the grounds for the auditors' opinion, to the date the SRS receives the taxpayer's opinion, capped at 30 days. The amendments give the taxpayer extra time to collect arguments and refute SRS objections. Also, the amendments will hopefully give the SRS more time to examine the taxpayer's arguments.

The amendments have also affected the time frame for a tax audit that includes a transfer pricing review. The tax audit time frame excluded the period running from the date on which information was requested from the taxpayer as part of the transfer pricing review to the date a reply was received, i.e. the tax audit had a statutory time limit. The amendments cancel the time limit on a tax audit that includes a transfer pricing review. This may place an extra administrative burden on the taxpayer if the SRS keeps requesting more and more information over a long period.

The third amendment relating to the procedural time frame relates to activities the SRS is permitted to undertake during the period excluded from the tax audit time frame. This was not prescribed by the law, so taxpayers often had disputes with the SRS over the procedural time frame being ignored by the SRS. This became a burning issue when the SRS requested information from another country's tax authority and a comparatively long period was excluded from the tax audit time frame.

To prevent this situation, the amendments provide that any activities the SRS might undertake during the period excluded from the audit time frame to obtain information within the SRS or from other government agencies, organisations, municipalities, financial institutions, other individuals or entities, as well as any tax controls applied to other individuals or entities, are not considered part of the tax audit.

The amendments are generally consistent with the case law on this matter, which implies that a tax audit time frame should include any information requests issued to the taxpayer.