

# ABC of tax authority's thematic reviews (2)

## (3/36/20)

This article completes what we wrote [last week](#).

As a thematic inspection ("TR") begins, tax inspectors will examine all the requested documents and may ask to see some additional documents and hear explanations (e.g. about the circumstances and parties to the transaction). If the taxpayer makes an online transaction, then access should be provided to the stored data. The inspectors will take a sample of documents or all the requested documents to their office for further investigation, so it is important to prepare copies or make arrangements for copies to be made at the TR venue. If the TR takes place, for example, on a construction site or at a point of service, the inspectors can go on a tour to get an idea of the business or to establish the existence of some asset (for example, during the TR at a scrap metal collection point the inspectors surveyed a container for collecting newly bought scrap metal, reconciled it with the accounting documentation, and verified the transaction).

The inspectors will take the material with them and continue to examine the documents at the offices of the State Revenue Service ("SRS"). If no significant breach is found, the TR might be over and the taxpayer will duly receive a memorandum of TR results. If, however, the inspectors find any discrepancy in the accounting documents, this will create the need for additional documents or explanations, and the taxpayer will be informed that the TR is to continue, with a time limit being set by which the documents or explanations should be provided. If the taxpayer is unable to satisfy the request by the deadline for objective reasons, an extension can be sought.

According to the "Advise First!" principle, at this stage the SRS can offer advice on any breaches detected or possible further steps. For example, in one case the taxpayer was asked to consider filing corporate income tax returns for certain months and reporting expenses with particular suppliers as non-business expenses. This does not mean that the taxpayer has to act on the SRS's suggestions, but further steps and potential consequences should be certainly evaluated. At the next meeting with the inspectors, the taxpayer should be ready to explain his opinion on the advice provided, as they will certainly enquire about that.

As with an audit, during a TR, the taxpayer's explanations are a key source of information because the taxpayer is best placed to explain their business specifics, the circumstances of entering into transactions, and other key issues enabling the item under inspection to be evaluated comprehensively. So we need to pay attention to the quality of our explanations.

### TR results

Under section [23\(5\) of the Taxes and Duties Act](#), the SRS conducts a TR, summarises its results, and informs the taxpayer within 30 days after the start of the TR.

As stated earlier, the TR is not concerned with the correctness of the tax charge, so the TR does not result in additional taxes being assessed on the taxpayer. According to the SRS, the following breaches are commonly detected:

- A business transaction cannot be traced from the beginning to the end in the accounting records;
- The taxpayer does not have documents relating to the organisation of accounting approved by the

CEO;

- The accounting records contain entries unsupported by documents;
- A restriction on the use of cash has been breached;
- Goods being traded do not have delivery and/or carriage documents or those documents have not been duly entered on the register of delivery documents;
- A cash payment received for transactions has not been entered into a cash register;
- A cash-register receipt or ticket has not been issued to the customer;
- Taxes on wages have not been calculated or paid correctly;
- The wrong code of occupation and/or code of information stated in the details of employees filed with the SRS;
- Details of employees that have entered into employment or changed or lost their employee status etc have not been filed or were filed with the SRS late.

Any minor breach the TR detects will be described in the TR memorandum, with recommendations for rectification and future prevention. No administrative penalty is imposed in those cases.

If the TR finds any breach that attracts administrative liability and is subject to review by the SRS (e.g. failure to meet requirements for using electronic devices and equipment for registering taxes and other payments or failure to report a suspicious transaction) the SRS can bring administrative proceedings. Although the reason for these proceedings is the breach discovered during the TR, the bringing of administrative proceedings is an independent process unrelated to the TR. From 1 July 2020, the [Administrative Offences Code](#) has been repealed and replaced by the [Administrative Liability Act](#), but descriptions of administrative tax breaches can be found in the tax laws, for example, [Chapter XVI of the Taxes and Duties Act](#).

The TR memorandum is not an administrative instrument because it does not impose any binding obligation on the taxpayer and does not affect their legal position. So the memorandum cannot be challenged or appealed in administrative proceedings.

If the TR detects a breach involving an understatement of tax, the taxpayer will be asked to exercise the right to file an adjustment to the tax return within three years after the statutory due date for payment, unless an audit of the tax and the tax period has been started or completed, the adjustment deadline has expired, or a decision has been made to adjust the tax charge in the meantime. If the taxpayer fails to carry out their tax obligations voluntarily, the SRS will have to take action. For example, a TR found that a contract for services a cooperative society of garage owners had signed with several individuals had the hallmarks of an employment contract, and the TR memorandum required the cooperative to pay national social insurance contributions for those persons. The cooperative disagreed with the finding and refused to pay, so the SRS launched an audit and assessed the contributions payable.

If a TR finds any facts suggesting that a taxable item is hidden or a tax payment is evaded, completion of the TR is likely to mean the beginning of an audit. And from the date the TR memorandum is prepared, the SRS has the power to secure enforcement of their potential decision ([section 26.<sup>1\(3.3\)</sup>\(3\) of the Taxes and Duties Act](#)).

The case law has dealt with the question of whether an audit can scrutinise the same period covered by the TR. The view taken before 2015 was that if the TR and the audit cover the same items and if the TR has found no breach, the taxpayer can rest assured that the finding will not be re-examined at a later date. This conclusion came from the restriction on repeat inspections in [section 23\(1\) of the Taxes and](#)

**Duties Act** (Supreme Court ruling SKA-571 of 28 December 2012, paragraph 13).

In 2015, however, the Supreme Court revised and reversed its opinion. The court found that, firstly, the law does not prevent the SRS from conducting repeat TRs of the same period or theme where reasonably necessary. Secondly, conducting a TR does not prohibit a tax audit. Thirdly, TR findings have no effect on the taxpayer's legal position, i.e. they do not result in any legally binding obligation affecting the tax liability. For this reason, **section 23(1) of the Taxes and Duties Act** in terms of both wording and meaning applies only to audits affecting the tax charge, with this clause aiming to protect the taxpayer's legal certainty about any tax liabilities assessed as a result of the tax audit. That is why section 23(1) prohibits a repeat inspection of the tax liability and a revision of the tax charge, but this does not apply to a TR. So it does not matter what the subject matter of the TR was and whether this coincides with the subject matter of the audit (Supreme Court ruling SKA-86/2015 of 21 January 2015, paragraph 10).