

Plenty of amendments to Taxes and Duties Act this year 3/33/23



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The Taxes and Duties Act is among the pieces of legislation that have been amended the most in recent months. A number of important changes have been made to reviews facing taxpayers and ways of settling disagreements with the State Revenue Service (SRS).

First of all, changes have been made to how many types of SRS review procedures exist and to the rules on how those are carried out. In future there will be only three types of administration and review measures: an observation, a tax control, and a tax audit. Any ongoing procedures will be completed according to the old rules. For any procedure, the taxpayer will be allowed time to rectify any irregularities and pay taxes voluntarily. Cutting down the number of various procedures and relevant rules is certainly a welcome step in the direction of making the tax authority's work more efficient.

A general restriction is imposed on the tax control process – it must not exceed four months. If a tax control results in additional taxes being charged, the SRS will issue a tax control invoice for this amount of tax, plus a late fee and a penalty.

A tax audit may cover a 3-year period, but if adjustments to taxable income arise from transfer pricing issues or hybrid mismatches, the maximum period is five years after the statutory due date for payment.

To incentivise taxpayers to enter into a settlement agreement with the SRS, amendments to the Taxes and Duties Act will significantly widen the scope of a settlement agreement, and the taxpayer will be able to seek a settlement either before or after the tax control invoice is issued, as well as in the course of appealing it. The main difference is that the earlier the taxpayer suggests a settlement, the higher the discount will be on the late fee (in the case of a tax control) or on the late fee and the penalty (in the case of a tax audit). For example, entering into an agreement before a tax invoice is issued will entitle the taxpayer to an 85% reduction in the late fee charged as a result of the tax control. However, if the taxpayer appeals the tax control invoice in court before entering into an agreement, the late fee reduction will be only 55% (dropping by 10% in each subsequent instance of appeal). A similar approach is adopted in the case of a tax audit: entering into an agreement before a decision is made will see 60% off the late fee and 60% off the penalty.

In future the SRS may issue a decision prepared by their information system on the basis of automatically processed data in the following cases:

1. Granting and refusing a payment deadline extension
2. Cancelling the decision to grant a payment deadline extension

Such an automated decision will be valid without an SRS officer's signature.

In such a decision the SRS will have to mention this special procedure, i.e. that the decision is based solely on automated data processing. Also, the SRS decision will have to provide information on how the taxpayer can receive an explanation of automated decision-making. Such a decision will have certain consequences in terms of paying overdue tax charges:

1. For entities, payment of overdue tax charges will be split into equal monthly instalments.
2. For individuals, payment of overdue tax charges will be split into equal monthly or bimonthly instalments.

Before cancelling the automated decision to grant a payment deadline extension, the SRS will have to notify the taxpayer. The SRS will have to post on their website information on the data used in making the automated decision and on the decision-making diagram, including information on the criteria used in assessing the taxpayer, and on the legal and actual consequences of the decision.

Amendments to the Taxes and Duties Act will form the basis for the rating system and for the taxpayer assessment system, and the SRS will have to publish the taxpayer's overall assessment produced by those systems.

Finally, in the course of discussing an amendment to the Taxes and Duties Act, it was found that the time frame for challenging the SRS opinion in the case of a business transfer was unreasonably short, so the SRS decision on a business transfer can now be challenged within one month.