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Tax authority’s new approach to taxpayer control 2/46/23


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The State Revenue Service (SRS) has so far conducted several types of review to examine a taxpayer’s tax payments for compliance with statutory requirements. Amendments to the Taxes and Duties Act effective from 30 June 2023 mean the SRS now has only two types of review to carry out all necessary activities:

1. A tax control
2. A tax audit

A tax control takes a new approach to tax administration, while the tax audit rules are based on amendments updating the term “arm’s length transfer pricing review”.

This article explores the types of tax controls existing before the amendments, the new approach to tax administration and new procedures, as well as new terms and the taxpayer’s ability to reach agreement with the SRS on voluntary performance of tax obligations.

Tax control measures existing before the amendments

The SRS used several types of review to carry out necessary control activities:

1. A thematic review
2. A data compliance review to promptly examine compliance with certain enactments and to detect and prevent breaches of financial and business rules
3. Adjustment to a taxable item on detecting tax evasion
4. Adjustment to the amount of tax due where tampering with cash register software is detected
5. A comprehensive audit of the taxpayer – a tax audit – on detecting substantial and malicious instances of tax evasion

It’s important to note that under the transitional rules of the Taxes and Duties Act, all reviews launched before the amendments came into force must be duly completed under the old rules.

Tax control – a new way to administer a tax review

To make the tax control process more efficient and easier to follow, from 30 June 2023 the first four control measures have been combined into one – a tax control.[1]

Before starting a tax control, the SRS will deploy the following incentives:

- The taxpayer will receive a letter from the SRS via its Electronic Declaration System (EDS) asking for documents and information necessary for review.
- The proposed time limit for filing information is ten working days with the option of extension but not to exceed 30 days.
- If necessary, the SRS will contact the taxpayer electronically or meet in person.

- Having evaluated the documents and information received from the taxpayer, the SRS may ask him to explain potential discrepancies or adjust his tax returns.
- If the taxpayer is unable to explain the discrepancies and fails to change his behaviour during the grace period, i.e. he fails to adjust his tax returns, he will face tax control activities.

If the SRS decides to launch control activities, then:

- The launch of a tax control (including a transfer pricing review) will be notified to the taxpayer by letter via EDS.
- The tax control must be completed within two months after it was started. For objective reasons it may be extended but not to exceed four months.

The tax control will be terminated as follows:[2]

- The decision to terminate is made (no additional tax is charged).
- The parties enter into a settlement agreement[3] – the sooner this is done, the greater reduction is available before a decision is made and a tax control invoice issued (up to 85% of late fees may be waived).
- If sufficient facts have been gathered, a decision is made (a tax control invoice issued)[4] assessing the tax charge and late fees (a reduction/waiver is no longer possible) for the period running from the date the tax became due. A penalty will be charged in exceptional situations where illegal manipulation of cash registers has been detected.
- The decision to launch a tax audit is made.

A tax audit[5]

A comprehensive audit of the taxpayer – a tax audit – is a separate review that remains unchanged. If the SRS decides to launch a tax audit, then:

- The launch of a tax audit is notified to the taxpayer by posting the decision via EDS ten working days in advance.
- The tax audit must be completed within 90 days after it was started, unless the time limit for making a decision is extended.
- The tax audit is carried out within three years after the statutory due date for payment, i.e. the SRS is to make a decision on audit results within three years after a particular tax became due for payment.
- The tax audit is completed by making a decision on audit results that definitely charges a penalty in addition to tax charges and late fees.
- Restrictions on the duration of a tax audit do not apply to cases where a joint cross-border tax review is carried out or where a transfer price is examined.
- When a transfer price is examined for arm’s length compliance, the taxpayer’s taxable income is determined or adjusted and late fees plus a penalty are charged within five years after the statutory due date for payment.

For a tax audit, the amendments permit the following activities:

- The taxpayer may agree with the SRS to settle his tax obligations voluntarily by entering into a settlement agreement before a decision on tax audit results is made.[6]
- If taxable income adjustments arise from transfer pricing risks, the tax audit and the tax

control may cover five years after the statutory due date for payment not only for deemed profit distributions as part of the corporate income tax base but also for distributed profits.

We hope the substantial changes to the SRS review process will make it easier for taxpayers to follow and will improve the effectiveness of tax controls, as well as allowing and motivating the SRS and the taxpayer to agree on ways of settling legal disputes faster.

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[1] The term in section 1(37) of the Taxes and Duties Act

[2] The sequence defined in section 23(5.2) of the Taxes and Duties Act

[3] The closing approach in section 41 of the Taxes and Duties Act

[4] The term in section 1(38) of the Taxes and Duties Act

[5] The term in section 1(16) of the Taxes and Duties Act

[6] The closing approach in section 41 of the Taxes and Duties Act