

Attempts at Tightening Tax Administration 2011

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On October 2010, a letter, N AS-37-2/12931@, was published by the Federal Tax Service. The Tax Office has sent the tax inspectorate recommended forms for notification of the need for familiarization with documents connected with the calculation and payment of taxes, and of the act of opposition to tax audits, in respect to the carrying out of desk and field tax audits. So what's new here?

The legislator of the Tax Code has established a minimum guaranteed time for the submission of documents by the taxpayer for a tax audit — 10 working days. It has also been fixed in the Tax Code that since Jan. 1, 2010, in the carrying out of tax audits the tax authorities have no right to request access to documents from the taxpayer before they have been submitted to the tax authorities. However, the rules of law have seemingly become too "narrow" for the tax authorities. They have decided that they have the right to obtain original documents both in field and in desk audits and without complying with any special procedures, time frames or limitations.

The tax authorities base their position on the idea that requesting access to documents and familiarization with the original documents are different procedures. A request for access to documents is made on the basis of an investigative demand for the submission of documents, whereas familiarizing themselves with the original documents is something the tax authorities can do without an investigative demand. And if the tax authority issues not an investigative demand but some other document, for example a notification, then the taxpayer does not have the guarantees outlined by the Tax Code. The minimal guaranteed time for submission of documents of 10 working days does not apply with the issuing of a notification, inasmuch as it is outlined only for the execution of an investigative demand. So,

after the "invention" of the notification for familiarization with original documents, tax audits have in fact begun to be made not on the basis of copies but on the basis of original documents. Tax authorities prefer not to take previously received copies of documents along with them to tax audits, demanding the originals; occasionally several times.

Imagine that an organization receives a notification for familiarization with original documents with a notice period of two working days. Within such a document are requested the original agreements made with a hundred contractors, along with all the tax ledgers. It is obvious that to gather together all the various elements, or even list all of the requested documents, would be impossible in two days. However after two days the taxpayer will already have received the act of opposition to tax audit and instruction to rectify violations. Afterward, the head of the organization (the chief accountant) will after two or three days receive the protocol for administrative offenses under Article 15.6 of the Administrative Offences Code and in some cases Article 19.5 of the same code, even if the documents are being put together, as they say, "at full pelt." Recall that the maximum sentence under Article 19.5 of the Administrative Offences Code is the disqualification of the head.

Taxpayers do not agree with the position taken by the tax authorities and have turned to the courts, pointing to the following:

- According to Article 23 of the Tax Code, taxpayers bear only those responsibilities outlined by legislation on tax and duties. Subparagraph 6, Section 1 of this article states that taxpayers are responsible for submitting to the tax authorities and their officials all documents necessary for the calculation and payment of tax, in the order and instances as outlined in the code.
- Paragraph 12 of Article 89 of the Tax Code outlines that a taxpayer is responsible for ensuring the possibility for officials of the tax authorities conducting a field audit to familiarize themselves with documents connected with the calculation and payment of taxes. In the conducting of a field tax audit, documents necessary to the audit may be requested from the taxpayer in the manner prescribed by Article 93 of the present code, which bears the name "Request of access to documents in conducting a tax audit." That is, the receipt by the tax authority of either originals or of copies constitutes a request of access to documents.
- The provisions of Article 89 of the Tax Code also clearly indicate that receipt from a taxpayer of original documents for familiarization is carried out according to the mode of the request of access to them. In this way, the one document by which the tax authority has a right to demand original documents for conducting an audit is an investigative demand, as outlined by the Tax Code.
- The Tax Code does not make provision for such documents as a "Notification of the need for familiarization with documents connected with the calculation and payment of taxes," or of an act of opposition to tax audits. In this regard, it is not permitted to bring anyone to administrative accountability for their non-fulfillment.
- The tax authority has no power to reduce the minimum guaranteed times by the Tax Code for the submission of documents for a tax audit. The actions of the tax authority in establishing shorter time frames than the minimum guaranteed times of the Tax Code are illegal and violate the requirements of Article 93 of the Tax Code.

The courts, having examined the position of the taxpayer, have found it to be legitimate.

And so, dear taxpayers — defend yourselves!

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