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Remedies Against Tax Surrealism

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Even if a tax audit results in the tax authority justifiably challenging the taxpayer's improper calculation of taxes, it does not follow that additional tax assessments, late payment interest and fines are inevitable. Before voluntarily parting with money, the audited taxpayer should consider the tax laws' arsenal of defenses against additional assessments, notwithstanding that the tax authorities are correct as to the substance of the violation.

First, the law emphasizes adherence to the so-called material conditions of the procedures for the review of the tax audit materials, with any violation constituting unconditional grounds to annul the tax authority's audit decision. The law expressly states that these conditions include ensuring that the taxpayer is able to:

- Take part in the review of the audit materials, which in turn requires timely notification of the taxpayer of the date and time of the review of the audit materials; and
- Submit explanations.

The right of the taxpayer to submit explanations means, most importantly, that the tax authority must deliver the audit act to the taxpayer. In one interesting recent dispute, the court rejected the tax authority's argument that the audit act had been sent by mail. The court held that the mailing receipt showed the contents of the letter sent by the tax authorities to weigh no more than 20 grams; since the audit act weighted 120 grams, the letter could not have contained it.

The tax authorities often "forget" that, along with the audit act, they are required to provide the evidence that serves as the basis for their additional assessments. The rationale is that the taxpayer is entitled to determine whether the act is consistent with the evidence, and whether

the evidence itself was properly obtained.

The taxpayer should also be aware of other procedural pitfalls that sometimes snare careless tax officials. For example, the decision issued upon review of the audit materials must be made by the same tax official that actually reviewed the audit materials. The taxpayer's participation in the review of the audit materials must be ensured at all stages of tax control, including in connection with the results of additional tax control measures. And if the tax authority's decision contains new claims not identified in the audit act, this constitutes a clear violation of the taxpayer's right to submit explanations.

Second, a violation of the statutory procedure for considering audit materials may result in annulment of the decision, if the violation caused or contributed to the wrong decision. In particular, this concerns cases where the tax authority ignores its obligation to establish that the taxpayer was at fault in the tax violation and to determine any exculpatory or mitigating factors. Without this evidence, the tax authority either does not have the right to assess an additional fine, or may at least be required to reduce the fine by at least half, in accordance with the rule on procedural violations applies in this case, as

Third, the tax authorities constantly ignore the fact that the purpose of tax audits is to verify taxpayer compliance with tax law, specifically the correct calculation and timely payment of taxes. Both the failure to pay sufficient taxes and overpayment of taxes are contrary to law.

The taxable base for profit tax is income received less expenses. Therefore, profit tax can be overpaid if income that does not count towards the tax base is included, or if deductible expenses are not included. Taxes are also calculated subject to applicable tax benefits, and the tax authority is required to check whether the taxpayer is eligible for any benefits it has not claimed.

On the other hand, this principle does not apply to unclaimed VAT deductions, since tax deductions are based on the taxpayer's right to make the claims in its mandatory tax returns. If tax deductions are not claimed, the tax authority has the right to disregard them.

As the tax authorities usually do not check whether too much tax has been paid, especially in the event of an audit, it is worth obtaining independent verification of your tax obligations and submitting claims for overpaid taxes to the tax authorities. In our experience, half the expenses that taxpayers do not include when calculating the profit tax base are nevertheless allowed by law. Overpayments may be applied against any additional assessments resulting from the audit, and may even exceed them. In this case, the difference can be recovered from the treasury as overpaid taxes.

By law, the tax authority's purpose in carrying out tax audits is not the indiscriminate assessment of taxes, late payment interest and fines, but rather determining the correct amount of taxes payable, subject to all factors, whether they increase or reduce the amount payable. Taxpayers subject to an audit should take all appropriate steps to ensure that the tax authorities stay faithful to that purpose.

Thus, irrespective of whether the tax authority's complaints are justified, any additional assessment may be wrong. In this case surgical intervention is required, as no other treatment will work.

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