

Case: Auditor

1 September 2013

Situation

A company received a notice about the scheduled state tax audit. Company management was confident that they have fully complied with the relevant legislation. Besides, the management was busy with daily activities and there was no available staff to accompany the inspector. The company staff did not take part in the process of the tax inspection and waited for the results. Unexpectedly, the resulting tax audit act contained errors and loose calculations of the tax inspectors. Accordingly, the company appealed the tax audit act in court. As a result, the company experienced financial losses and operational disturbances, distracting the company's management and staff from work.

Avoiding the costs and expenses indicated above

Solution

Similar complications can be avoided in the following way. It is necessary to have professional lawyers accompany tax inspectors to establish a dialog with the auditors. Normally, the auditors draw up the tax audit act with the final results of the audit. The act contains detailed tax periods, existing violations and imposed additional charges. Our lawyers ask for preliminary tax inspection report (draft report). Notably, tax legislation of Kazakhstan does not require tax authorities to provide a "preliminary tax inspection act" (draft tax inspection act). However, in practice such preliminary measure is permissible as it allows the inspectors to identify minor errors in the audit process and also allows the company to prepare for a potential appeal.

In particular, in a recent tax inspection case our lawyers requested a draft report of the tax inspection. In the report the auditors have calculated individual income tax to non-residents' income (IIT) and the penalty. Our lawyers together with the company accountants analyzed the calculation. It transpired that the inspectors wrongly calculated the amount of penalty. The company agreed with the calculated IIT accrual however the calculated penalty was almost five times the correct amount. Our lawyers demonstrated the error to the inspectors. The latter conceded their mistake. The inspectors diligently corrected the amount of penalty and provided the company with a tax inspection act containing the correct amount of accrued penalty. Timely actions thus helped the taxpayer save resources and avoid formally challenging the incorrectly calculated amount of penalty on appeal.

Recommendations

Allocate sufficient resources to appoint professionals to accompany tax inspections whether internal tax experts or external lawyers. Request the preliminary tax inspection report (draft report) in advance of the completion of the tax inspection. Upon receipt of the preliminary

tax inspection report (draft report), recheck the calculations and identify causes of discrepancies (if any). In case of an error, provide reasoned arguments to the tax authority.