

# TAXPAYERS RIGHTS DURING TAX INSPECTION

## 1. What is a tax audit (hereinafter audit) and what is the aim of conducting an audit?

An audit is a procedure implemented based on law, the aim of which is:

- to clarify the trustworthiness of reports, declarations, calculations specified for taxes and other compulsory payments, basic data, other documents prescribed by the RA legislation presented by a business entity;
- to clarify the compliance of actual activities taken by a business entity with the requirements of law and other legal acts;
- to protect property rights of a business entity;

## 2. Who has authority to decide to conduct an audit and what information must that decision include?

2.1 Before starting the audit the head (deputy official) of tax state service shall issue an order on conducting an audit, which shall include;

- the name of the body conducting the audit;
- the full name of the business entity under audit;
- position, name, surname of officials (s) conducting the audit;
- audit questions, such as, what the body conducting audit will clarify as a result of the audit;
- the time period of the audit;
- the aim of the audit;
- terms of the audit;
- legal basis for conducting the audit, citations to the provisions of the RA legislation, which permit implementing such an audit.

2.2 If the audit aims to discover business entities conducting activities without state registration or without a corresponding license, the order of the audit will not include:

- the full name of the business entity under audit;
- audit questions;
- audit term;

2.3 In some cases prescribed by law, an audit order can be implemented also by the head of the (regional) tax inspection, if such authority is transferred to him. Such cases prescribed by law shall be:

- audit of application of excise stamps and cash registers;
- audit of base data and their factors regulated by law on "fixed payments"
- audits of currency exchange offices and foreign exchange dealers;
- audits of entrepreneurial activities conducted without state registration or corresponding license;
- audits conducted to reveal employees that are not registered.

## 3. Must the audit conducting body inform the business entity about the audit beforehand?

3.1 Two copies of the decree or instruction must be given to the head of business entity or the official replacing him 3 working days before starting the audit. The latter shall sign one copy confirming thereby that they are notified about the audit. The signed copy shall be passed to the state official conducting the audit.

3.2 Copies of the order of conducting an audit shall not be given to the business entity beforehand in the following cases:

- audit of application of excise stamps and cash registers;
- audit of base data and their factors regulated by law on "fixed payments";
- audits of currency exchange offices and foreign exchange dealers;
- audit of registration of delivered, transferred or sold products and goods;
- audits of entrepreneurial activities conducted without state registration or corresponding license;
- audit of application of laws regulating currency relations and other legal acts adopted based on those laws;

#### **4. Who has no right to take part in an audit?**

Officials not mentioned in the order shall not be entitled to take part in the audit. In case official(s) conducting the audit are replaced with other official(s), the replacement shall be implemented by decree and the business entity shall be notified according to the procedures stated above.

#### **5. Can the audit conducting official change the aim of the audit during its process?**

Official(s) conducting the audit shall have no right to act beyond the scope of the aim mentioned in the order on conducting the audit, which means that the official can not require documents, other materials, implement activities, which are not related to the aim of audit mentioned in the order.

In case there come forth new circumstances and needs, the aims and scope of the audit may be amended by the relevant state body at the written substantiation presented by officials(s) conducting the audit, of which the head or the deputy of the business entity shall be notified in writing by being presented with the new order together with the previous one.

#### **6. Rights of officials conducting audit.**

Officials conducting the audit have the right:

- to have free access to the business entity's subdivision under audit in the process as the representative of the latter;
- to demand documents, data and other information, explanations, references that have direct relevance to the aims of the audit;
- to take documents, duplicate, photocopies of documents, items, samples and other necessary substances that have direct relevance to the aims of the audit and do not hamper the regular activities of the business entity;

- to implement supervision audits on operation preciseness of metrology, weighing, measuring and other relevant machines and equipment connected with the aim of audit;
- to require the head or the deputy of the business entity, within the scope of issues mentioned in the audit order, to conduct inventory of basic funds, commodity-material values, financial means and calculations involving this process appropriate employees and professionals of the business entity;
- to implement other activities for which they are authorized by law.

Officials conducting audit are obliged:

- to not hamper regular operations of the business entity;
- to make known to officials of the business entity their rights and responsibilities;
- to give written response to any written inquiry of the head or the deputy of the business entity, directly related to audit period of the business entity, concerning the audit;
- meet all requirements imposed by law and other legal acts of the RA related to the audit.

## **7. Rights of officials of the business entity during the audit.**

The officials of the business entity during the audit shall have the right:

- to prohibit the audit (putting documents at disposition of officials conducting the audit) by presenting a written notification on the same day to state bodies authorized to conduct the audit, if the auditors have ignored the requirements of law;
- to become familiar with the audit acts;
- to present explanations, clarifications, litigation, appeal actions of officials regulated by law;
- to demand refund for the damage accrued in the result of illegal actions taken by officials conducting the audit;
- to involve professionals, experts, auditors and lawyers at any stage of the audit with the aim to protect interests of the business entity under audit;

## **8. What may happen during the audit?**

2 copies of acts shall be compiled as a result of the audit, if the business entity has state share 3 copies shall be compiled. In case of not finding violations and imperfections simply a reference shall be compiled?

## **9. What is an act?**

An act is an administrative act adopted by the body conducting the audit, the adoption of which means that the body conducting the audit has discovered violations and shall force the business entity to fulfill its tax obligations. Tax obligation shall include payment of taxes, as well as payments of fines and penalties for violation of tax legislation.

The act of the audit shall describe the registered violations, those legal norms, the requirements of which have not been implemented, exact period of violation, citation of relevant documents and corresponding legal bases of application of liability.

#### **10. Who will take the responsibility of evidence?**

The administrative body is always responsible to prove the unfavorable circumstance in the relations of any individual, legal person and administrative body. The business entity is not obliged to prove that it has not violated the requirements of legislation. The body conducting the audit is responsible to prove the fact of violation by the business entity. If the business entity has not proved the fact of acting corresponding to the legislation, that circumstance can not become a bases of liability for the business entity.

#### **11. Evidence obtained of violation of legal requirements.**

The information about taxpayers obtained during the control over the calculation and imposition of taxes with violations of the law may not serve as a basis for the calculation and imposition of tax liabilities.

When taking documents officials conducting audit put a stamp on the copies and hand them to the representatives of the business entity. A report shall be compiled for the documents taken and give 1 copy of it to the business entity.

Evidence which does not correspond to the requirements stated above, as well as are obtained by violations of other requirements of the legislation, can not be bases of liability of the business entity.

#### **12. To whom and where can the activities of the body conducting audit be appealed?**

The activities of the body conducting the audit can be appealed to the state body or to the court within definite time periods. The head of the business entity or its deputy may stop the audit until they get the response of the appeal, except in cases prescribed by law, when the business entity is not provided with the order of the audit beforehand.