

TAX CONTROL AND APPEALING ITS RESULTS IN MONGOLIA



GRATA
INTERNATIONAL



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About GRATA International



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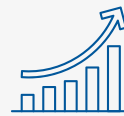
Key Industry Sectors:

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> 22

countries of presence



> 31

years of experience



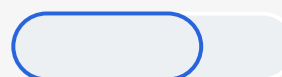
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professionals



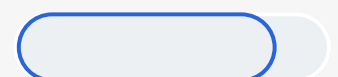
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practice areas



7 700+

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TAX CONTROL AND APPEALING ITS RESULTS IN MONGOLIA



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TYPES AND/OR FORMS OF TAX CONTROL, THE PROCEDURE FOR CONDUCTING

The Tax Administration shall conduct tax audits in accordance with both general and special guidelines. These audits will be assigned and carried out in a comprehensive or partial manner, ensuring compliance with international standards and legislation as specified in Article 41.2 of the General Law on Taxation. Moreover, the tax administration may conduct simplified tax audits, taking into account the risk profile of the taxpayer pursuant to Article 41.3 of the General Law on Taxation. The tax administration shall conduct the audit on fulfillment of the taxpayer's obligations under this Law on the basis of the risk assessment or the taxpayer's request.

The main rights and obligations of the tax authority and the taxpayer: According to Article 41.10 of the General Law on Taxation, the Tax Administration shall exercise the following powers for carrying out tax audits:



1. to summon the taxpayers and the counterparty on reasonable grounds, and obtain explanations with respect to their activities;

2. to conduct general operations specified in Chapter 5 of this Law as follows:

- Accessing the Premises and Warehouses;
- Collection of Data, Information, and Documentation;
- Conducting Inspections;
- Conducting Inventory Audits; and
- Time and Motion Study.

3. to obtain explanations and references in relation to tax and accounting reports, accounts records, other financial documents, and information in the integrated tax registration and information database.



According to Article 41.12 of the General Law on Taxation, taxpayers shall have the following rights and obligations in relation to tax audits:

- 1. to protect their rights and legitimate interests personally and/or through their authorized representative or technical adviser, to be present during a tax audit, and provide evidence and justification;

2. to obtain or provide an explanation on tax assessments and payments, and the progress and outcome of audits; and

3. to provide the tax administration with the financial and other documents necessary for the tax audit, electronically or on paper as required, and to undergo the tax audit.

The timing of the tax audit: Under Article 41.5 of the General Law on Taxation, taxpayers shall be notified at least ten (10) business days before a tax audit is conducted.

The documents (acts) that are handed over to the taxpayer at the end of the tax audit: In accordance with Article 79.1 of the General Law on Taxation, when exercising its full powers in relation to tax collection, supervision, and conducting tax audits, the Tax Administration shall validate its decisions by producing notifications, demand letters, act on the seizure of assets, seizure letter, tax re-assessment acts, value-added tax assessment, payment validation act, report letter, notes, tax refund act, invoices/bills and pre-invoices, letters of notification, demands, request for withholding, act on the calculation of allocations, notices on the summons, notifications on the seizure of asset, recommendations, and other relevant documents.

The deadlines for fulfilling the results of the tax audits: The tax administration shall send a tax bill for payment of tax debt to a taxpayer and as for taxes, due losses, and penalties established by the tax re-assessment act or penalty notices, it is stipulated to be paid within 15 working days after the decision is handed down.

Where it becomes clear that a taxpayer is unable to pay tax debt due to one of the circumstances stated in the General Law on Taxation, the respective tax administration may grant a grace period, extending the payment due date up to one (1) year at the taxpayer's written request in accordance with Article 53.1 of the General Law on Taxation.

Where it becomes clear that a taxpayer is unable to pay tax debt due to one of the circumstances stated in the General Law on Taxation, the respective tax administration may grant a grace period, extending the payment due date up to one (1) year at the taxpayer's written request in accordance with Article 53.1 of the General Law on Taxation.

Moreover, when a taxpayer is unable to pay tax debt within the grace period prescribed above due to a reasonable excuse, the relevant Tax Administration may extend the grace period again based on a request of the taxpayer.

The extension for the grant shall not exceed two (2) years, in total, including the initial grace period in accordance with Article 53.2 of the General Law on Taxation.

PROCEDURE FOR APPEALING THE RESULTS OF TAX CONTROL

PRE-TRIAL SETTLEMENT

A. whether a pre-trial settlement is mandatory;



Yes, in accordance with Article 81.1 of the General Law on Taxation, the taxpayers shall be entitled to file complaints and recover caused damages under the administrative procedures with regard to the decisions made by the Tax Administration and the state tax inspectors, except for the proceedings on examination and resolution of violations by the tax administration and the state tax inspectors, in accordance with the jurisdictions as follows:

1 Complaints appealing the decisions of a state tax inspector, except for the tax re-assessment act, shall be filed to the head of the relevant tax administration which directly supervising him/her;

Complaints appealing the decisions of the tax administration shall be filed to the head of its higher-level tax administration; **2**

3 Complaints appealing the tax re-assessment act issued by the state tax inspector shall be filed to the Dispute Resolution Council in accordance with the relevant jurisdiction.

B. the authority where the appeal on the results of the tax audit should be filed;

Article 46.1 of the General Law on Taxation states that "a Tax Dispute Resolution Council shall work under the Tax Office in order to resolve complaints filed by taxpayers in connection with the tax acts stated in the General Law on Taxation.

C. the time frame for filing the appeal

According to Article 47.1 of the General Law on Taxation, a taxpayer, an authorized representative of the taxpayer, or a professional tax consultant shall have a right to file a complaint to the respective Dispute Resolution Council within 30 days after receiving the tax re-assessment act.

D. the time period for consideration of the appeal

In accordance with Article 47.15 of the General Law on Taxation, the Dispute Resolution Council shall resolve a complaint within 30 days after filing the taxpayer's complaint and hand over the decision to the parties of the disputes.

E. the powers of the authority considering the appeal

Under Article 47.5 of the General Law on Taxation, the complaint shall be settled by the following jurisdictions:

A complaint of a taxpayer that belongs to the tax administration of aimag, Capital City and city with state-grade shall be resolved by the Dispute Resolution Council at that tax administration of the respective aimag, Capital City and city with state-grade;

The Dispute Resolution Council at the state administrative organ in charge of tax matters shall resolve a complaint of a taxpayer that belongs to the major taxpayers' unit.

F. the decision on the appeal

As stipulated by Article 47.10 of the General Law on Taxation, the Dispute Resolution Council shall make a decision to either change, invalidate, maintain, or suspend the amount certified by the tax act and send back it to the Tax Office, and the decision shall be formally documented as a Resolution. If either one of the following conditions stated in this Law occurs while the Dispute Resolution Council discuss the complaint, the re-assessment act shall be sent back to the higher-level tax administration for a review of the re-assessment for a period of up to three months and the re-assessment act complaint upon can be suspended.

COURT SETTLEMENT OF TAX DISPUTE

Cognizance of tax disputes

According to Articles 81.1.4 and 47.1.8 of the General Law on Taxation, the taxpayers shall be entitled to file complaints appealing the decisions made by the Dispute Resolution Council to the court (or the administrative court) and it can only be altered by a court ruling.

Time frame for going to court

If a taxpayer disagrees with Dispute Resolution Council's decision, the taxpayer shall have a right to appeal to the court within 30 days after the delivery of the council's decision.

The state stamp duties

Claims relating to non-property interest and claims that cannot be valued shall be 70 200 tugrugs(app 21USD) as stated by Article 7.1.2 of the Law on Stamp Duties.

The time period for the claim

In accordance with Article 55.1 of the Law on Administrative Procedure, if the judge considers that there are no grounds for a refusal to receive the claim specified in this law, he/she shall issue an order to initiate a case within seven days from the date of receipt of the claim or the date of completion of the claim requirements. Afterward, unless otherwise provided by law, a case shall be adjudicated within 60 days of the case as stipulated by Article 63.1 of the Law on Administrative Procedure. Whereas, if the case is returned by the appellate court for re-trial, the case shall be adjudicated within 30 days of the court receipt in accordance with Article 63.2 of the Law on Administrative Procedure. If necessary, the Judge Council of the court may extend the period specified in Articles 63.1 and 63.2 of this law up to 30 days for the first time, and up to 15 days for the second time, based on the advice of the judges of that court.

The Court decision

According to Article 106.3 of the Law on Administrative Procedure, the court of the first instance shall review the administrative case at the court hearing and issue the following decision:

- 1 to annul the administrative act or administrative contract if it is found unlawful and the plaintiff's rights and legal interests are violated due to it;
- 2 to determine the administrative act or administrative contract is clearly unlawful;
- 3 to determine the disputed act was unlawful if after lodging a claim for annulment of an administrative act and the act was canceled or annulled, or it was implemented in another way, and there is an interest of the plaintiff;
- 4 to order the administrative body to issue the necessary administrative act or to determine the unlawful omission if the decision to refuse to issue an administrative act or the omission of non-issuance is unlawful and the right and legal interest of the plaintiff is violated because of it;
- 5 to establish whether there is a legal relationship and to confirm it;
- 6 to reduce the amount of fee on the administrative act which establishes fee rate;
- 7 to award for the damages or to change the damage amount that caused to a natural person and legal entity due to illegal activity by an administrative agency;
- 8 to annul or establish an administrative normative act is invalid if it is unlawful and the plaintiff's right and legal interest has been violated or may potentially be violated due to it;

- 9 to annul if it is found that the law has been violated or that it rendered unable to implement the public legal function for the claim lodged by an administrative agency;
- 10 to annul or determine clearly unlawful if the public interest has been violated or may potentially be violated due to unlawful administrative activity;
- 11 to suspend the administrative act for up to six months until a new act is issued by the administrative agency if the court deems it is necessary to clarify the condition of the case further, and if the scale of further clarification exceeds the court's analysis ability;
- 12 to satisfy the claims in full;
- 13 to satisfy a part of the claims and dismiss the rest;
- 14 to dismiss the entire claim.

When the decision comes into force

The court decision becomes effective after being handed down and heard in accordance with Article 108.2 of the Law on Administrative Procedure.

Appealing the decision of the court of first instance in the appealing court

Unless otherwise provided by law, the case participants, their representatives and attorneys shall have the right to lodge an appeal with the appellate court within 14 days after receiving the court decision which was issued after adjudicating in the first-instance case proceeding.



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- | | | |
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