Tax Audit and Investigation

Tax audit and investigation is the overall concept of the tax inspection and treatment carried out by the tax department by law on the conditions of tax payment and withholding performance of the taxpayers and withholding agents. It includes daily audit and investigation, audit and investigation on special items and audit and investigation on special cases.

The fundamental tasks of tax audit and investigation are implementing the State tax laws, investigation and penalizing tax offences, ensuring the State revenue, safeguarding the tax order, promoting compliance and guaranteeing the implementation of the tax laws. Therefore, the tax audit and investigation must be based on the facts and the tax laws, regulations and rules, rely on the people and strengthen the cooperation with the judicial department and other relevant departments.

The tax audit and investigation organizations set up by the tax departments at all levels should perform their duty of tax audit and investigation in line with their jurisdictions.

1) The selection of the targets for tax audit and investigation

On the basis of the need and audit resources of the tax audit and investigation, the tax departments at all levels should work out the tax audit and investigation plan for the following year at the end of each year and report it to their chief persons for approval.

The targets for the tax audit and investigation should be selected by the following three approached:

a. Selected by computer analysis of the cases.
b. Selected at certain percentage of the number of taxpayers or by random according to the audit plan.
c. Selected according to the public disclosure, cases transferred from other departments, cases assigned by the higher department, by exchange of information.

The tax departments at all levels should set up tax offence disclosing centers within the tax audit and investigation organizations for accepting and dealing with the public disclosures of the tax related offences.

The public may disclose the cases in written form or rally. The disclosing centers accepting the oral disclosures should record that by pen or by tape recorders. After confirmation by the disclosing person, the written records may be signed or sealed by the disclosing person except for those not willing to provide their names. If the disclosing persons are not willing to make them public, the disclosing centers should keep confidential for them. If the cases of the disclosure are not within the jurisdiction of the departments, the centers should advise the disclosing persons of disclosing to the relevant department or transfer the materials to the relevant department or transfer the materials to there Levant department for handling.

Once the audit targets are finalized, the tax department should set up the tax audit master records.
trace the inspection and evaluate the implementation of the audit plan.

2) The tax cases put on file for investigation
Out of the targets selected for tax audit and investigation, the cases judged primarily of one of the following circumstances should be put on file for investigation:

a. Evade tax, flee from tax collection of arrears, cheat for export tax refund, refusal to pay tax and illegally provide to the taxpayers, withholding agents the bank accounts, invoices, documents or other conveniences leading to loss of tax revenue.

b. without the above offences, but the tax investigated and recovered is between 5000 Yuan to 20000 Yuan (to be specified by the tax department at provincial level in consideration of the local conditions).

c. Privately print, forge sell, fill in illegally for others and falsely issue invoices, illegally bring, post, transport or store blank invoices, forge, privately make invoice supervision stamp and anti-forgery products for invoices.

d. Other circumstances that the tax department believes should be put on file for investigation.

3) The jurisdiction of the tax audit and investigation
The Tax Audit and Investigation Department of the SAT is responsible for drafting the tax audit and investigation rules, methods and organizing the implementation of them through the country, handling serious tax cases registration, investigation and putting forward treatment opinions, and instructing and coordination the tax audit and investigation work across the country.

The office of SAT and the local tax bureaus in different locations are respectively responsible for the tax audit and investigation word within their jurisdictions. In case of encountering the issues relevant to other jurisdictions, they should timely inform the other jurisdictions for investigation. Where they have different opinions on the same tax issue, the opinions of the party responsible for the tax shall be observed first. Then it should be reported to the higher tax department for judgment, which is the final one.

The investigation of the tax cases is in principle charged by the tax department where the taxpayers are located, and the invoice cases should be handled by the tax department of the case location.

Within the offices of SAT or the local tax bureaus, any tax case involving two or more tax offices shall be handled by the tax office conducting the investigation the earliest. In case of dispute of the jurisdictions, the relevant tax offices should consult each other for the power of investigation in line with the principle of favoring the case investigation. Where no agreement could be concluded after consultation, the higher tax office shall coordinate or judge for that.

The following cases may be investigated by the higher tax office or the relevant investigation may be organized by the higher office in uniform:

a. Serious tax evasion, flee from tax collection, cheating for export refund, tax avoidance and tax refusal.

b. Serious forging, selling, illegally issuing, falsely issuing invoices and other serious tax offences.

c. The disclosure requires that the higher tax office should send staff for investigation.

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d. The cases are involved with the relevant staff of the competent tax offices.
e. The higher office believes that it should investigate the cases.
f. The lower office believes that the cases should be investigated by the higher offices.

4) Performance of the tax audit and investigation

Before performing the tax audit and investigation, the tax department should collect the overall information about the taxpayer to be audited, choose the audit method, and then send paper notice to the concerned taxpayer by notifying him of the audit time and the materials to be prepared. But, where the offences are disclosed and thus the tax department has ground to believe that the taxpayer has conducted the offences and that the advance notice will affect the investigation, no advance notice shall be needed.

Where the tax auditors have relative, interest relationship with the taxpayer under audit that may affect the impartial execution of law, the tax auditors should dodge. The taxpayers under the audit has the right to request them to dodge.

The tax audit and investigation should be conducted by two or more persons together and by showing the tax inspection card.

With the implementation of the tax audit and investigation and based on the need and statutory procedures, the measures like inquiry, check on accounting books and on-spot investigation might be taken. For the investigation across jurisdictions, investigation by sending letter or visit might be conducted.

At the end of the audit and investigation, the tax auditors should tell the taxpayers the results of the audit and the main problems for the purpose of checking and opinion.

For the cases put on file for investigation, the tax auditors should, at the end of the audit and investigation, prepare the Tax Audit Report and submit it together with the Tax Audit Work Sheet and other evidence to the trial department.

For the cases not put on file for investigation, the tax auditors may, at the end of the audit and investigation, directly prepare the Tax Treatment Decision Letter in line with simple procedures and implement it after approval by rules.

In case of no problem found after audit and investigation, the auditors shall prepare the Tax Audit Conclusion for approval for those cases not put on file for investigation. For those put on file for investigation, the auditors shall prepare the Tax Audit Report to be submitted together with other evidence to the trial department.

5) Tax audit and investigation trial.
The trial of tax audit and investigation should be charged by particular persons and may be brought under joint hearing if necessary.

The trial persons should carefully examine the Tax Audit Report and other relevant materials submitted by the auditors to confirm whether the facts of offence is clear, evidence is true, the data is accurate, the materials are complete and whether the application of the laws, regulations and rules are proper and in conformity with the legal procedures and the treatment suggestions are appropriate. Regarding the big, serious and difficult cases, the tax department feeling hard to try should report to the higher tax department for decision.

At the end of the trial, the trial persons should put forward the comprehensive opinion, prepare the Trial Report and Tax Treatment Decision Letter and over to the relevant staff for execution after approval. For those constitution crimes, the cases that should be transferred to the judicial department shall be transferred to the judicial department after preparing the Tax Offence Transfer Letter that is approved by the leaders.

Out of the Tax Audit Report of the cases found no problems after investigation, those confirmed by the trial persons shall be prepared the Tax Audit Conclusion for approval and those in doubt shall be returned to the auditing staff for supplementing investigation or reported to the leaders for separate arrangement.

The trial persons receiving the Tax Audit Report and the relevant materials should completer the trial within 10 days after the receipt.

6) The execution of the tax treatment decision
After receiving the Tax Treatment Decision Letter, the tax executors shall prepare the tax documents delivery sheet and deliver it to the taxpayer and monitor the execution.
Where the taxpayer fails to follow the Tax Treatment Decision Letter, the tax executors should take the enforcement measures on the tax and interest to be made up by laws, prepare the Seal-up (confiscating) Certificate, Decision Letter of Auction of Commodities, Goods, Properties or the Tax Withholding Notice and implement them after approval by the director of the tax office (or branch) above county level.

Where the taxpayer neither follows the penalty decision or the enforcement measure of the tax authorities within the time limit nor applies for revise nor appeals to the people’ court, the tax department above county level shall prepare the Tax Penalty Enforcement Execution Application to be submitted together with relevant materials to the people’s court requesting the people’s court for assisting the enforcement execution.

For the cases that the administrative treatment decision has already been made and that are already transferred to the judicial department, the tax department should pursue the tax, fines and late payment interest owed prior to the transfer of the cases. For the cases that administrative treatment decision has

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not been made and that are directly investigated by the judicial department, the tax department should make up the formalities of payment. For the cases that are cancelled free from criminal penalty, the tax department should impose administrative punishment depending on the seriousness of the offences and collect the late payment interest.

7) Customs investigation. Within three years after the release of the exported goods or during the Customs control period and within the following three years for the bonded goods, free or reduced duty imported goods the Customs may conduct investigation on the accounting books, accounting vouchers, declaration documents and other relevant materials of the enterprises, units directly connected with the imported and exported goods and relevant imported goods.