



**Tax control
in the Republic of Kazakhstan**



GRATA
INTERNATIONAL



TAX CONTROL IN THE REPUBLIC OF KAZAKHSTAN

The Tax Code of Kazakhstan [1] provides for a wide range of tax control forms, with the main ones being cameral tax control and on-site tax inspections.

Tax control is carried out by tax authorities, as well as customs authorities in relation to VAT on imports and excise duties payable in connection with the movement of goods across the border.

Any act as well as action (inaction) of the tax authority can be appealed by the taxpayer to a higher tax authority and/or courts, if they consider them unlawful and unjustified.

CAMERAL TAX CONTROL



Due to the digitalization of tax administration, tax authorities have widely implemented cameral tax control.

Within the framework of cameral control, tax authorities remotely monitor and analyze tax reporting and other documents submitted by taxpayers, as well as other information about taxpayers received from government agencies and other sources.

If any discrepancies, errors, or violations are detected as a result of cameral control, the tax authority notifies the taxpayer about them for self-correction.

The notification from the tax authority regarding violations identified during desk control must be executed by the taxpayer within a 30-day period through self-correction of the violations. For example, this can be done by submitting additional tax reporting with the calculated tax amount or by correcting the electronic invoice.

If the taxpayer disagrees with the notification, they have the right to submit a written explanation to the tax authority with supporting documents and/or appeal the notification to higher tax authority. If the taxpayer and the tax authority do not reach a consensus, the tax authority must conduct an on-site tax inspection of the taxpayer to verify the issue and make a final decision.

[1] Code of the Republic of Kazakhstan «On taxes and other obligatory payments to the budget (Tax Code)» (25 December, 2017 № 120-VI)



○ If the tax authority's notification requires the adjustment of tax amounts or payments due to court rulings declaring transactions invalid, invalid state registration of a counterparty, or the determination that goods were not actually supplied and services were not rendered, then in case of disagreement, the taxpayer can appeal such a notification only in court.

○ If the taxpayer does not respond to the notification within the 30-day period (does not fulfill or appeal), the tax authority has the right to arrest their bank accounts or restrict the issuance of electronic invoices, and later appoint an on-site tax inspection.

○ It is important to note that the taxpayer is not subject to administrative or criminal liability in case of violations discovered based on the results of cameral control.

○ Cameral control is part of a risk management system for categorizing taxpayers into different levels and selecting them for on-site tax inspections.

ON-SITE TAX INSPECTION

An on-site tax inspection is usually conducted at the taxpayer's location to verify the accuracy and completeness of the taxpayer's compliance with tax obligations and social payments, as well as on issues of transfer pricing and government regulation of the production and turnover of excisable goods (crude oil, alcohol, tobacco, petroleum products, etc.).

The tax inspection is carried out based on a prescription issued by the tax authority that assigned the inspection. The prescription for conducting the inspection, as well as notifications of suspension, resumption, and extension of the inspection, must be registered with the prosecutor's office. The taxpayer has the right to refuse entry to the office or premises of tax authority officials if they do not present the prescription.

Types of tax inspections:

BY REGULARITY:

1

Periodic tax inspections, for which taxpayers are selected based on the risk management system at the beginning of each half-year. Lists of taxpayers subject to inspection are published by tax authorities;

2

Unscheduled tax inspections, which are appointed, for example, based on the taxpayer's request, within the framework of criminal proceedings, etc.

BY SUBJECT MATTER:

1

In the framework of a comprehensive tax inspection all types of taxes and obligatory payments are subject to inspection;

2

Thematic tax inspection - separate types of taxes, obligatory payments or separate issues are inspected;

3

Counter tax inspections - mutual settlements with counterparties are checked to confirm the fact and nature of transactions;

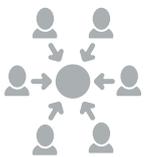
4

A time inspection is carried out to establish the actual income and expenses of the taxpayer during the period of the inspection.

The duration of a tax inspection is up to 30 business days from the date of issuing the prescription, with the possibility of extension up to 180 business days. The tax authority is authorized to suspend the inspection period during the collection of requested documents and information.

In the framework of a tax inspection, the tax authority has the right to require the taxpayer to submit accounting and primary documentation, written explanations, including from employees, access to view the information software used to automate accounting and tax accounting, to inspect property and conduct inventories, request information about the taxpayer and their activities from government agencies, banks, and other organizations, including information protected by law as confidential, send requests to foreign states, etc.

FOLLOWING THE TAX INSPECTION, THE TAX AUTHORITY ISSUES A TAX INSPECTION REPORT, WHICH INCLUDES INFORMATION ABOUT THE TAXPAYER, A DESCRIPTION OF THE CONDUCTED INSPECTION, INCLUDING IDENTIFIED VIOLATIONS, AND CONCLUSIONS DRAWN BY THE TAX AUTHORITY BASED ON THE RESULTS OF THE TAX INSPECTION



If a taxpayer has undergone a periodic tax inspection, the tax authority must firsthand over a preliminary tax inspection report to the taxpayer. The taxpayer has the right to submit objections to higher tax authorities if they disagree with the conclusions drawn in the preliminary tax inspection report. After considering the objections, the tax authority issues a final tax inspection report.



If violations are revealed as a result of the tax inspection, in addition to the tax inspection report, the tax authority issues a notice based on the results of the tax inspection. In this notice, the tax authority may, for example, assess additional amounts of taxes, payments, and penalties against the taxpayer, and/or reduce the amount of loss, confirm or refuse the refund to the budget of excess VAT claimed by the taxpayer, etc.

It is important to note that the taxpayer will be subject to administrative or criminal liability for violations revealed by the results of the tax inspection.



Notification on the results of a tax inspection must be either executed by the taxpayer or appealed by him to the Appeals Commission of the Ministry of Finance within 30 business days.

PRE-TRIAL SETTLEMENT OF A TAX DISPUTE

The complaint must be reviewed, as a general rule, within 30 business days, with the possibility of extending the deadline to 90 business days. When reviewing the complaint, the Ministry of Finance has the right to appoint a thematic tax inspection to examine specific issues. The Ministry is also entitled to send inquiries to government agencies, organizations, and foreign countries. The review period of the complaint is suspended during the period of conducting a thematic tax inspection, as well as during the process of sending inquiries and receiving responses to them. Based on the review of the complaint, the Ministry issues a reasoned decision.



For the period of appealing the notice on the results of a tax inspection the tax authority restricts the taxpayer's disposal of fixed assets by a value equal to the appealed amount.

The taxpayer has the right to appeal the notice on the results of the tax inspection in court, if they disagree with the results of the complaint review by the Ministry of Finance.

JUDICIAL SETTLEMENT OF A TAX DISPUTE

There is a three-tier judicial system in Kazakhstan. Tax disputes are considered within the framework of administrative court proceedings.



The deadline for filing an administrative lawsuit regarding the results of a tax inspection in the first instance court is 1 month from the date of receiving the decision of the Ministry of Finance.

To file an administrative lawsuit, the taxpayer must pay a state fee of 1% of the disputed amount of taxes, payments, and penalties, but not exceeding 20,000 monthly calculation indexes. [2]

The administrative lawsuit is heard by a single judge with the participation of the parties involved: the taxpayer as claimant, the tax authority as respondent, representatives of the prosecutor's office, as well as third parties if necessary (such as representatives of the local executive body, Ministry of National Economy, etc.).

The total period for considering an administrative lawsuit in the first instance court cannot exceed 3 months. Based on the review of the lawsuit, the court issues a decision.

The decision of the court of first instance can be appealed to the court of appeal by filing an appeal within 2 months from the date of its delivery to the taxpayer in writing. The appeal shall be considered by judges collegially within 3 months. Based on the results of the appeal, the court shall issue a resolution.



The decision of the court of appeal comes into force within 1 month from the date of its delivery in written form. Within this period the taxpayer may appeal it in cassation to the Supreme Court of the state. In order to file a cassation appeal the taxpayer must pay the state duty in the amount of 0,5% of the appealed amount of accrued taxes, payments and penalties, but not exceeding 20,000 monthly calculation indexes.



The cassation appeal is considered by judges collegially (not less than three judges). The cassation appeal shall be considered within 6 months from the date of receipt by the Supreme Court of the court case materials of the lower courts. Based on the results of consideration of the cassation appeal, the Supreme Court shall issue a resolution, which enters into legal force from the date of its announcement.



Resolution of the Supreme Court issued as a result of consideration of cassation appeals may be reviewed in exceptional cases on the proposal of the Chairman of the Supreme Court or a protest of the Prosecutor General, if the decision violates public interests, the uniformity of the application of law norms by the courts.

[2] In 2023, this threshold is 60,900,000 tenge or approximately 135,000 US dollars

TAX MONITORING

Within the framework of tax monitoring, tax authorities establish the actual taxable base of the taxpayer and also exercise control over transfer pricing by verifying the market prices applied in financial and economic activities.

Types of tax monitoring:

✓ Monitoring of large taxpayers - commercial organizations, excluding state enterprises, with the highest aggregate annual income without adjustment, are checked.

There are specific criteria for selecting taxpayers for conducting monitoring of large taxpayers. Companies are primarily selected whose sum of the value balances of fixed assets at the end of the tax period is at least 325,000 times the monthly calculation indexes [3] and whose number of employees is at least 250 people.

Then, from the pool of taxpayers meeting the above criteria, the first three hundred large taxpayers with the highest aggregate annual income without adjustment are selected.

Regardless of meeting the criteria mentioned above, a certain group of subsoil users and/or operators, as well as taxpayers whose annual tax payments amount to no less than 2,000,000 [4] times the monthly calculation indexes, are subject to monitoring as large taxpayers.

Within a 30-day period, the taxpayer must fulfill the tax authority's requirement to provide documents, written explanations, and financial statements necessary for conducting the monitoring.

Upon identifying violations, the tax authority notifies the taxpayer, who is then obligated to provide a written explanation within 15 days.

The tax authority may disagree with the provided written explanation and invite the taxpayer for a discussion, requesting additional documents and clarifications.

The outcome of reviewing the monitoring results is the issuance of a motivated decision by the tax authority, which is sent to the taxpayer within 2 business days.

The taxpayer submits a notification of agreement with the decision within 5 days from the date of receipt.

✓ Horizontal monitoring involves the exchange of information and documents between the tax authority and the taxpayer, based on principles of cooperation, trust, legality, transparency, and expanded information interaction.

Horizontal monitoring serves as a means of interaction between taxpayers who wish to pay taxes correctly, openly declare their income, and minimize tax risks independently, and the government, which aims to collect taxes while minimizing expenses related to taxpayers.



Horizontal monitoring is carried out upon the conclusion of an agreement with the authorized body. The categories of taxpayers eligible to enter into such an agreement are determined by the authorized body.

Horizontal monitoring commences from January 1st of the year following the agreement's signing and continues for a period of three years with the possibility of extension, and starting from this period, the taxpayer is no longer subject to monitoring as a large taxpayer.

A taxpayer subject to horizontal monitoring is not subject to administrative liability if they agree with the notification regarding the results of horizontal monitoring and do not challenge it in court. Administrative liability also does not arise if violations are discovered as a result of a tax inspection during the taxpayer's participation in horizontal monitoring.

[3] In 2023, this threshold is 1.121.250.000 tenge or approximately 2.519.693 US dollars.

[4] In 2023, this threshold is 6.900.000.000 tenge or approximately 15.505.797 US dollars.

TAX SURVEY

The purpose of conducting a tax survey is to confirm the actual presence or absence of a taxpayer or tax agent at the registered location.

Tax survey is carried out with the participation of witnesses during working hours, and based on its results, a tax survey report is prepared.

In the event that the taxpayer is found to be absent at the registered location, the tax authority sends a notification to confirm the location (absence). The taxpayer, or typically the head of the taxpayer's company, must provide a written explanation of the reasons for the absence along with notarized copies of documents confirming their whereabouts to the tax authority within 20 business days from the date of sending such notification. Failure to comply with this requirement may lead to the tax authority suspending expenditure transactions on bank accounts or deregistering the taxpayer from VAT.

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GRATA International is the largest independent Kazakhstani law firm, and one of the leading law firms in Central Asia and the Caspian Region. GRATA has provided a wide range of legal services in these regions for over 25 years.

Throughout its existence the Firm has developed an experienced tax practice. In view of this, in 2005 the tax department was formed. Unlike many consulting companies, GRATA's tax team comprised mainly of lawyers and auditors who have experience of working in the tax authorities. This feature enables us to provide our clients not only correct but practically feasible advice.

OUR SERVICES



Representation and Protection of Client's Interests in Tax Disputes



Corporate Taxation and Tax Planning

Individual Taxation



VAT Refund from the Budget



Tax Support and Structuring in M&A Transactions



Taxation of Subsoil Users



Due Diligence of Tax Accounting (Tax Audit)



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Tax Administration

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