



Legal Pointer

Issue 17 for December
▪ Tax Audit

Reference:

1. Law on Taxation
2. Law on Amendment to the Law on Taxation

Tax Audit



Tax audit is an examination of the accounting records, financial statements and documents related to the business of the taxpayers in order to prove that the calculation, declaration and tax payment have been made in accordance with the law and regulations on taxation. In this context, we observed that tax audit is made for the purpose of promoting voluntary compliance with the law and regulations on taxation and to ensure that the tax obligation under the real regime has been highly implemented.

1. Type of Tax Audit

According to the Law on Taxation and Law on Amendment to the Law on Taxation, tax audit is classified into 3 types: **Desk Audit, Limited Audit and Comprehensive Audit.**

A. Desk Audit

Desk Audit is the examination of the monthly or annual tax declaration that is incorrect, irregular and inconsistency of the monthly or annual tax declaration. Generally this audit focuses on only specific matters and is easy to be resolved in the purchase-sell journal as well as some irregular points found in the tax declaration letter and information that the Taxation Administration received from various sources such as the General Department of Treasury, General Department of Public Procurement, General Department of Customs and Excise etc.

Desk audit must be made at the Taxation Office and the Administration of Taxation may invite the taxpayer to the Taxation Office to clarify and show relevant documents regarding irregularity of the tax declaration letter. In case a risk found through the tax declaration letter is complicated or has high risk, the officer in charge must stop auditing the desk audit and place it in the limited audit or comprehensive audit. The time for this type of audit must be made in 12 months at the latest after the submission of the monthly tax declaration letter or annual tax declaration letter.

B. Limited Audit

Limited audit is the type of audit that has limited extent and is made at the business location of the enterprise. This audit includes **audit on valued-added tax, audit on refund, audit as plan, and audit based on type of tax and other taxes in the monthly tax declaration letter and audit as plan of any specific expense or on any element in the balance sheet or in the result report.** Audit on value-added tax, audit as plan and audit based on type of tax and other taxes must be made **for the taxed period in the current fiscal year or 12 months consecutively counting from the current month backward.**

Audit as plan is part of the limited audit because a plan can be determined by any economic sector and focus on any expense-revenue, refund, inventory assessment or any account in the financial statement.

C. Comprehensive Audit

Comprehensive audit is a joint audit on profit tax, **value-added tax, special tax and other types of taxes in each fiscal year** that the taxpayers have an obligation to pay in accordance with the regulation on taxation. Comprehensive audit is required to be made at the location of the enterprise on all types of taxes including inspection of accounting, financial statement and documents related to the business in order to ensure that the enterprise has prepared accounting report and financial statement correctly in accordance with the law and has fulfill the obligation to pay taxes in accordance with the Law on Taxation.

In case an enterprise requests closures of business operation or in case there is a decision from the General Department of Taxation, the comprehensive audit can be made jointly between the Department of Enterprise Audit and Department of Large Taxpayers or Provincial/District Taxation Branch.

2. Period and place to be audited

Generally a tax audit can be made under the condition as follows:

- From 1 to 3 years following the submission of tax declaration letter or
- 10 years after the date requiring the submission of tax declaration letter if there is evidence proving that there is an act of blocking the implementation of the regulations on taxation.
- Or in any period according to the written agreement of the taxpayer (Article 117 of the Law on Taxation).

Tax audit can be made at the taxation office for desk audit and can be made at the location of the taxpayer (enterprise/establishment) for limited audit and comprehensive audit.

3. Selection of enterprise for audit

There are questions that there are many enterprises of my business type, why only some enterprises are often selected by the Taxation Administration? What criteria is the audit on enterprises/establishments based on?

The selection of enterprises for audit is based on analysis of risk and other information including:

- Analysis of risk
- Information received from the third party
- Specific sector
- Specific issue for type of tax or any taxpayer
- Location of enterprise etc.

4. Process of Tax Auditing

4.1. Notice of Auditing

Before starting an audit, the Administration of Taxation will give notice of the audit to the enterprise president or representative of the taxpayer first. The notice letter on the audit is issued by the Director of Department or Director of Provincial/District Taxation Branch and must have the following:

- Date of auditing visit (day and month of the auditing visit)
- Period to be audited (period of fiscal year to be audited)
- Type of audit (desk audit, limited audit or comprehensive audit)
- Name of officers tasked to conduct the audit. (*Please see the sample of notice letter in the annex.*)

The notice letter is considered to be given properly when having given it to the taxpayer or when having sent it via the post office as certified letter to the legal address of the taxpayer although the taxpayer to be given the notice refuses to accept the notice letter.

In case the address of the taxpayer has been changed and the taxpayer has not notified the Administration of Taxation about the change of the address, the notice letter will be sent to the address that was last known and it is considered to be given properly. In case the notice letter by any reason cannot be given to the taxpayer as described above, the notice letter is considered to be given properly if the Administration of Taxation has:

- Post the notice letter on the gate of the house or business location of the taxpayer or
- Published in the media requiring the taxpayer to come to the Administration of Taxation not later than 15 days following the publication.

In general, an audit is made in 10 days after delivering the notice letter on the audit to the taxpayer or sooner at the request of the taxpayer. In particular case based on the Law on Taxation (Article 100 and Article 116), the Administration of Taxation conduct an audit visit without giving notice to the taxpayer when the notice of the audit may damage the result of the audit.

Request for postponement of the audit

The taxpayer can request a postponement of the audit visit **based on a valid reason** and not later than 30 days as stated in the notice letter for the audit visit. In case the length of the request is less than 10 days, the taxpayer must give notice to the tax auditor. In case the request exceeds 10 days to 30 days, the taxpayer must make a request in writing to the Director of Department or Director of Provincial/District Taxation Branch.

4.2. Provision of document

After receiving the notice letter on an audit visit, the taxpayer must prepare all relevant documents for the auditor as requested. Meanwhile, the taxpayer should check their tax declaration letter and relevant documents.

The taxpayer must provide the documents to the tax auditor at the latest by:

- 7 days following the request, for comprehensive or limited audit.
- 15 days after receiving the notice letter, for desk audit.

Failure to provide the documents as requested, the tax auditor can assess the tax based on the information that the tax auditor has.

4.3 Interview

An interview is to provide an opportunity for the tax auditor to meet with the taxpayer or representative of the taxpayer who know clearly the activity of the business operations of the taxpayer in order to find a general aspect of the business of the enterprise. The taxpayer or representative will be asked to explain the business activity, accounting records and recording system of the enterprise. In the process of the audit, those who are in charge of each department of the business operation will be interviewed as required by the tax auditor. After the interview, the tax auditor must have a preliminary minutes with the taxpayer or the taxpayer representative.

4.4 Inspection of Documents

According to the Law on Taxation, the taxpayer must keep all the relevant records and documents and other financial documents as set out in the Regulations on Taxation and must submit those lists and documents as required to the Administration of Taxation to be examined. The enterprise must keep its accounting record, journal and other documents set out by the regulations on taxation or other regulations in 10 years counting from the end of the current taxed year. For example, the according records, journal and other documents for 2015 must be kept until 2025.

Document inspection can be made at the business location of the enterprise. The tax auditor must not take the document or other records of the taxpayer without the decision from the General Department of Taxation. The tax auditor can require the enterprise to photocopy necessary documents. In case the workplace of the taxpayer is not proper for auditing or does not have a photocopier, the auditor can take the documents to be inspected at their office with approval of the taxpayer. In this case, all the documents must be returned to the taxpayers when the auditing has finished.

Not only the above documents, Article 98 of the Law on Taxation requires the enterprise to provide further documents as follows for the auditor:

- Information of the enterprise (Certificate of Registration of Company, Certificate of Registration of Value-Added Tax, Company Statute and other certificates...)
- Accounting reports (Cash Flow Statement, Balance Sheet, Current Asset, Debt, Income Statement)

- Other documents (Payroll of Workers/employees, employment contract of foreigner, Lease/Sale Contract, Monthly/Annual Tax Declaration Letter, Tax Adjustment Statement)

4.5. Explanation on Carelessness Found

After finishing the examination of the documents, the auditor must prepare a draft report of the audit result with consultation with the taxpayer on:

- Problems found
- Reason and relevant regulations which is the basis for assessing the tax
- Tax to be re-assessed

In this context, the taxpayer can express ideas or objection to the draft report of the audit result as in the 3 points above by showing further documents to support their objection. As long as the objection of the taxpayer to the draft report of the audit result is groundless and has no supporting evidence, the auditor will give notice orally of the disapproval of the objection of the taxpayer.

4.6 Notice of Assessment of Tax or Re-assessment of Tax

After assessing the tax or re-assessing the tax, the tax auditor must give the notice letter on re-assessment of tax to the taxpayer. According to Article 118, paragraph 2 of the Law on Taxation, the taxpayer has 30 days to answer the tax re-assessment to the office of the Tax Department responsible for the tax re-assessment. Within that period, taxpayer can accept or dispute the tax re-assessment. The taxpayer shall be considered to have accepted the tax re-assessment if he fails to answer.

4.7 Protest against tax assessment or tax re-assessment

The taxpayer who is not happy with the tax assessment or tax re-assessment can file a complaint to the General Department of Taxation. The complaint must have its cause and other information in assessing the tax or re-assessing the tax. Article 121 of the Law on Taxation stipulates that an administrative protest can only be accepted if the letter of protest has the contents as below:

1. Name and identification number of the taxpayer;
2. Reference to the assessment, decision, or results which are the objects of the letter of protest;
3. Facts or acts which are objects of the letter of protest;
4. Reasons of the protest;
5. Date and signature of the taxpayer and signature of the taxpayer's authorized representative if necessary.

The tax administration must issue a new decision within 60 days after the date the letter of protest is received to confirm the correctness or incorrectness, in whole or in part, of the tax assessment or other decision that the taxpayer disputes. The tax administration shall also state the basis of this decision. If the taxpayer does not accept this new decision of the tax administration he can file a letter of protest to the Committee of Tax Arbitration within a period of 30 days.

The taxpayer has the right to appeal to the competent court against the decision of the Committee of Tax Arbitration within a period of 30 days after receiving notification of that decision. The taxpayer must deposit in the national treasury an amount of money equal to the taxes, additional taxes, and interest under dispute and as assessed by the tax administration before filing the appeal to the court.

4.8 Payment of Tax

According to Article 91, paragraph 2 of the Law on Taxation, the taxpayer must pay tax and other interests within 30 days after receiving the notice letter on assessment of tax or re-assessment of tax.

Summary of Tax Audit Process

1. Notice of the tax audit
2. Request for postponement of the tax audit visit (if any)
3. Provision of documents
4. Interview
5. Inspection of document
6. Explanation on carelessness found
7. Notice of assessment of tax or re-assessment of tax
8. Protest against assessment of tax or re-assessment of tax
9. Payment of tax

Formulated by:
GMAC Legal and Labour Team

Disclaimer: This legal pointer intends to provide members with legal information only and does not serve as legal advice. GMAC is not responsible for any damage resulting from the implementation of this legal pointer. GMAC encourages members to seek additional explanation from legal experts before implementing this legal pointer. For further information, please contact GMAC at 023 301 181 or email: kimpichda@gmac-cambodia.org